Political Reorientation of Japan

Report of

GOVERNMENT SECTION

Supreme Commander for the Allied Powers



To the Government Section with my admiration and affectiorate regard "No group has worked more assiduously, more efficiently or more successfully in the building of a new and democratic Japan."

Douglas MacArthur
Sept. 2, 1948
Tokyo

THREE YEARS

Message of General of the Army Douglas H MacArthur on the third anniversary of the signing of the Instrument of Surrender.

Three years have now passed since in Tokyo Bay on the quarter-deck of the *Missouri* the major nations of the world entered into solemn covenants to erect upon Japanese soil a bastion to the democratic concept They were actuated by a singleness of purpose to see restored to their respective peoples, exhausted by the trial of war, the blessings of a secure peace

That bastion to the democratic concept is now in the advanced stages of erection but the singleness of purpose among the nations there represented no longer exists, and the universal longing for world tranquillity has not been translated into effective actuality. All peoples without exception desire peace but the mutual misunderstandings, the blind misconceptions, the general frailties and inadequacies of the human being have made it impossible as yet for him to devise the mechanical processes to achieve his noble purpose The council tables of the world have failed to produce a just resolution of vital issues among nations and men, and fear grips the peoples of many lands as the specter of war yet hovers over the earth

During these 3 years the Japanese people have done their part, and, in the existing circumstances, done it well This, despite the austerity of life in the wake of the tragedy of war and disaster and the ideological clash which impinges upon all mankind For they have here, in a confused and bewildered world, a calm and well ordered society dedicated to the sanctity of peace Flanked by the newly born Korean Republic and that stalwart land of the Filipino patriot, Japan now forms a sturdy pillar in a triangular buttress exemplifying before all of the peoples of the East the wisdom of the democratic concept

There need be no fear concerning the future pattern of Japanese life for the Japanese people have fully demonstrated both their will and their capacity to absorb into their own culture sound ideas, well tested in the crucible of Western experience, in lieu of those concepts responsive to the myths and legends which have so handicapped their past And today those practical weapons needed to repel the totalitarian advance—liberty, dignity, and opportunity—now safely rest in every Japanese hand, and the nation has thereby become an asset upon which the free world may confidently count It stands as an oasis of relative calm in a troubled and turbulent universe

Progress of the past 3 years thus offers striking proof that the impelling need of modern society lies in the moral recrudescence of the peoples of the earth, as to whom, regardless of racial derivation, nationalistic individuality, or geographic location, there exists no dissimilarity whatsoever in hopes and aspirations and ultimate human objectives. It demonstrates that the peoples of the East and the peoples of the West are motivated by these identical basic instincts, and that their interests lie in the attainment of that cultural blend, as between East and West, best calculated to advance the human welfare. It points with unmistakable clarity to the fallacy of the oft-expressed dogma that the East and the West are separated by such impenetrable social, cultural and racial distinctions as to render impossible the absorption by the one of the ideas and concepts of the other. It emphasized again the immutable truism that sound ideas cannot be stopped.

Editorial Note

This report on the political reorientation of Japan during the first 3 years of the Allied occupation of that country was prepared in the Government Section of General Headquarters, Supreme Commander for the Allied Powers

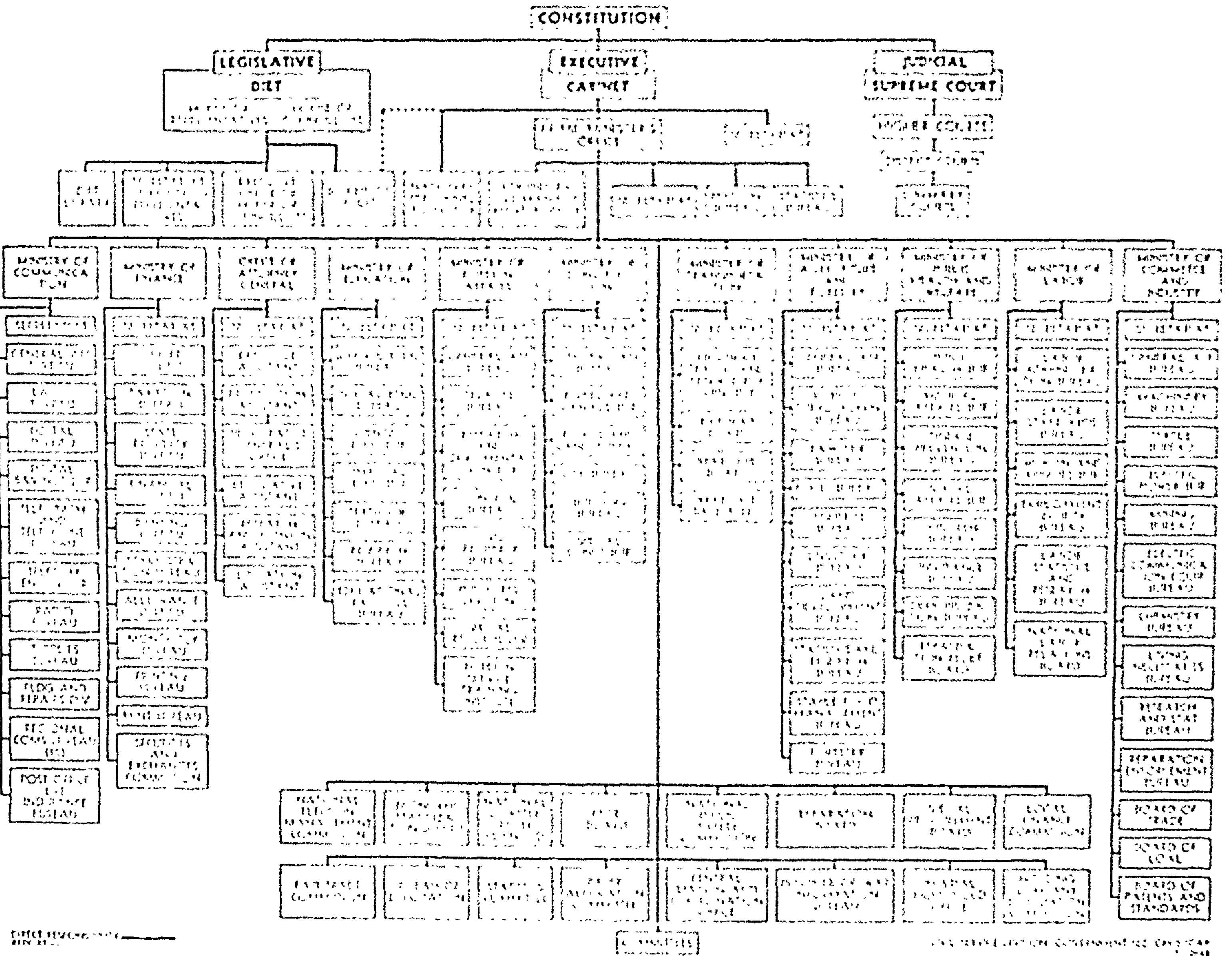
The main body of the report consists of 12 sections, contributed by or based on reports submitted by the staff members chiefly responsible for the execution of the Government Section's functions in the respective activities, as follows·

Section I	Control of Japanese External Affairs	Frank Rizzo.
II.	Removal of Ultranationalists	Jack Napier, Major, AUS.
III.	The New Constitution of Japan	Alfred R. Hussey.
IV	The National Executive	Guy J Swope and Alfred R Hussey.
V	The National Diet	Justin Williams.
VI	The Judicial and Legal System	Alfred Oppler
VII	Civil Service..	Blaine Hoover
VIII	Local Government.	Cecil G. Tilton.
IX.	Governmental Aspects of Law Enforcement	Frank E Hays
X	Popular Elections	Marcel Grilli.
XI	Political Parties ..	Carlos P. Marcum.
XII.	Political Education	Osborne I. Hauge.

Preceding the main body of the report are two unnumbered articles: "The Philosophy of the Occupation," by Brigadier General Courtney Whitney, Chief of the Government Section, and "Representative Government in Japan," by Charles L. Kades, Deputy Chief The first, reflecting General MacArthur's basic attitude toward civil government under a military occupation, sounds the keynote to which the efforts of the Government Section were pitched. The second, a panoramic view of political changes in Japan under the Occupation, evaluates the fruits of 3 years of Japanese efforts to achieve democratic self-government.

The coordination, revision and editing of the several sections of the report into a unified whole and the compilation of the appendices was carried out by an editorial staff supervised by Frank Rizzo, the Special Assistant to the Chief, Government Section The index was prepared by the Library of Congress

ORGANIZATION OF THE GOVERNMENT OF JAPAN



Contents

Appendices



Brigadier General Courtney Whitney

FOREWORD

The Philosophy of the Occupation*

By

Brigadier General Courtney Whitney

In many respects, MacArthur set the pattern for peace while heavily engaged in the violence of war For in the initial Philippine campaign, though under desperate military disadvantage, he set a standard of devotion to the integrity of the civil process of government without parallel in modern military history With both his northern and southern flanks forced to yield to the pressure of vastly superior enemy force, he sacrificed the distinct military advantage which lay in the defense of the city of Manila by withdrawing beyond its environs, and publicly establishing it as an open and undefended city, to save its civilian noncombatants, to preserve from destruction its houses of residence, learning and worship, and its historic cultural monuments; and to leave functioning its processes of civil government And, as he withdrew his forces to Bataan and Corregidor, there to establish their backs to the sea, he took up the peninsula and island defense without having superseded the civil by military power, or indeed in any area having ruled through martial law From Corregidor, President Quezon and his Cabinet, under emergency powers previously extended by the Philippine Legislature, conducted affairs of the national government and found full protection in their unrestrained exercise of this civil power, as they did when the government was subsequently established in exile in the city of Washington

At his headquarters in Australia, MacArthur continued scrupulously to adhere to this concept embodying the distinction between the military and civil power, and never failed to refer all civil problems arising in the guerrilla protected free areas of the Philippines, such as the appointment and dismissal of public officials, currency issuance and disbursement, public relief, judicial affairs, etc , to President

*This essay originally appeared as a series of two articles prepared for the International News Service.

Quezon for decision. Not infrequently upon receipt of complaints from civil officials, functioning in the free areas, of encroachment by the military upon the civil power, he sent stern warnings to the local guerrilla commander concerned that the only justification for his resistance lay "in the protection of the people and of their representatives in the discharge of the processes of civil government." He forbade the usurpation of the civil power by the guerrilla forces, and rebuked those who sought to merge the civil and military administrations under unilateral control.

On October 23, 1944, in Tacloban, capital of Leyte Province, just 3 days following MacArthur's initial landing upon Philippine soil, he raised the American and Philippine flags and formally restored all of the civil power within that area to Sergio Osmena, then President of the Philippine Commonwealth. Addressing himself to the citizens of Tacloban, he concluded: "On behalf of my government, I restore to you a constitutional administration by countrymen of your confidence and your choice. As our forces advance, I shall in like manner restore other Philippine cities and provinces until throughout the entire land you may walk down life's years erect and unafraid, each free to toil and to worship according to his own conscience, with your children's laughter again brightening homes long darkened by the grim tragedy of conquest." And at the termination of the ceremony, MacArthur turned to President Osmena and took his leave with the simple parting statement, punctuated by the steady roar of artillery fire, "Now, Mr. President, my officers and I shall withdraw and leave you to the discharge of your responsibilities."

Thereafter, as areas of the Philippines became liberated, they automatically reverted to civil rule, until on February 26, 1945—just 4 months and 6 days after landing on the beaches of Leyte—MacArthur, in Malancanag Palace in the city of Manila, formally restored the full civil power under the Constitution to President Osmena, saying with stirring emphasis in conclusion, "on behalf of my government I now solemnly declare, Mr. President, the full powers and responsibility under the constitution restored to the Commonwealth whose seat is here reestablished as provided by law." Many times, both before and after this epochal restoration of civil power, President Osmena and members of his Cabinet urged MacArthur to hold or share the powers of government, feeling that it was a task with which they were yet unprepared to cope, but he consistently refused to do so and refrained from any intervention in the civil process, holding that while the burden of responsibility was admittedly a staggering one, the only hope for the prompt emergence of a strong government lay in forcing it to meet alone the challenge of responsibility. In the manner in which the government met this challenge lies undisputed justification for MacArthur's stern insistence that it carry the burden.

With this background of rigid adherence, at times under most desperate circumstances, to the distinction between the civil and military power, even though dealing with an enemy rather than an Allied people, the pattern for the occupation of Japan was basically designed long before hostilities ended. And on August 30, 1945, as he winged his way toward Japan's shores, MacArthur's over-all plans were as crystal clear as they are now, long after their implementation. That he would elect to use the machinery of the existing civil government was a foregone conclusion. He saw in it the only means toward an orderly, efficient and cooperative administration of the country during the period leading to the formal restoration of

peace, and the only possibility of the Japanese people eventually coming to look upon the forces of occupation in reality as forces of liberation His deepest concern was that they might grow to understand, cherish and defend the liberties and dignity won only at the staggering cost of war and defeat. And with these things in mind, he proceeded, in so far as possible, to reserve use of the power inherent in his position in favor of extending maximum possible autonomy to the representatives of the Japanese people in the exercise of the civil power of government.

MacArthur had before him the general principles set forth in the Potsdam Declaration and the basic postsurrender policy formulated in Washington, and with these to guide him he issued a long series of formal directives to the Japanese Government to establish the broad outline of reformation desired in Japan's political, economic and social life[1] Thereafter, once this outline was established, he shifted the emphasis from direction to leadership and since, through consistent and painstaking effort, all acts of civil government have at least borne the stamp of Japanese thought, and for the most part have been taken entirely upon Japanese initiative For MacArthur saw from the start that at best the shadow of Allied bayonets was not conducive to democratic growth He understood fully the threat to permanence of any measure taken under sole or undue Allied pressure, and he sought to encourage the Japanese themselves, on their own initiative, to take the necessary steps forward under the broad outline of Allied policy. Indeed, he sought to encourage in the Japanese the realization that Allied policy was not in conflict with their own interests.

He early took the view that all measures taken by the Japanese themselves were to be reviewed only in the light of the general principles involved, and cautioned his staff not to demand revisions merely leading to perfection in statutory or regulatory refinement—possibly perfection not even to be found elsewhere. When the Japanese Government caused legislation to be enacted early in the occupation to democratize the election law, as a prelude to the first postwar general election, [illegible] law was found by the Government Section to be entirely within the framework [illegible] democratic principles, practice and precedent, but various loopholes were dis[illegible] which might well have given rise to corrupt electoral practices.* MacArthur [illegible] the points involved and decided that he would prefer to let the imperfections [illegible] rather than require amendments which while perfecting the law would [illegible] character as a Japanese instrument. This principle has guided all subse[illegible] taken by the Government Sec ion on Japanese legislation.

Early in the occupation, two International bodies were created by [illegible] among the major powers at Moscow to deal with occupation matters [illegible] the Far Eastern Commission, which by its terms of reference was [illegible] formulate basic policy to govern in the occupation, and the other [illegible] Council for Japan, which by its terms of reference was limited to the [illegible] and consulting with the Supreme Commander in the administration [illegible] power.[2] The Far Eastern Commission, because of its late start, its [illegible]

[1]Appendix A 3, The Potsdam Declaration, July 26, 1945, 11, United States Initial Post-[illegible] 29, 1945

[2]Appendix A 10, Agreement of Foreign Ministers at Moscow on Establishment of Fa[illegible] Coun il for Japan.

*See section X Popular Elections

position, and the dispatch with which the Supreme Commander proceeded under his basic and inherent powers to realize Allied objectives, its policy decisions for the most part have been confirmatory of action already taken under the broad outline of the Potsdam requirements. The Allied Council for Japan on the other hand, by its very terms of reference had little potency. MacArthur endeavored following its activation to make of it a constructive force in the occupation, but as it had no responsibility for executive action, its several Allied members obviously were in no position to give material assistance. Nor could MacArthur permit it to interfere with the executive action for which he was solely responsible to the Allied Powers or countenance its meetings to be used as a sounding board for propaganda.

Directives which have been formulated in Washington either by the Far Eastern Commission or the United States Government have been regarded by MacArthur as basic guides and he has tempered and timed their implementation to meet the situation as it has developed in Japan. Thus in the administration of the purge of undesirable persons from Japanese political and economic life, he has taken a much more moderate course than his directive required and modified its punitive philosophy to a philosophy shaped merely to ensure a leadership spiritually equipped to pursue a course conducive to democratic growth. And despite the prohibition contained in his basic directive that he "will not assume any responsibility for the economic rehabilitation of Japan or the strengthening of the Japanese economy," MacArthur has found it increasingly necessary to maximize progress toward recovery in order to minimize the burden upon the American people in the subsidization of food deficiencies.[3]

In the shaping of his own policies in the administration of the occupation or action in implementation of policy formulated in Washington, MacArthur has sought to follow what he has termed "the great middle course of moderate democracy." To do this, at times he has had to require reforms wholly distasteful to those adhering to the right in political and economic philosophy. At other times, he has had to maintain the status quo, or even veer to the right—decisions no less distasteful to those adhering to the left. This in turn has caused adherents of the extreme right and extreme left to find common ground and purpose in voicing criticism of MacArthur's administration, and given concrete evidence of the fact that in the great arc symbolic of political philosophy, the courses to the right and to the left, if pursued far enough, inevitably meet on the common point of totalitarianism, there to join in the attack against the philosophy of political and economic freedom. Thus, in his efforts to entrench political freedom based upon the rights and dignity of the individual, and economic freedom based upon free private competitive enterprise, he has received little aggressive support in a land where these fundamentals to American life and progress have never before been known. Yet, MacArthur has insisted that there be reserved to the Japanese people untrammelled recourse to judicial process against any Japanese law or action taken thereunder, regardless of the relationship of the law involved to occupation policy and requirements. By so doing, at the risk of Japanese judicial reversal, he has given bold

[3]Appendix A: 13, Basic Directive for Post-Surrender Military Government in Japan Proper, J.C.S. 1380/15, November 3, 1945.

emphasis to the affinity existing between occupation objectives and the Japanese public interest.

The mission of the Government Section in this unprecedented orientation of a government and a people toward the democratic concepts has been in general to advise the Supreme Commander for the Allied Powers on governmental reform, and in particular to make recommendations concerning the structure of civil government in Japan, its demilitarization, its relationship to the people, its relationship to business, the encouragement of local responsibility, and the elimination or reform of institutions, laws and practices which tended to prevent government by the people, and the implementation of decisions made with respect to these matters by the Supreme Commander for the Allied Powers [4]

In the discharge of these responsibilities, the Government Section has worked within the framework of MacArthur's philosophy It has conferred exhaustively with representatives of the three branches of the Japanese Government with the view to encouraging and advising them in getting their own "house in order," and the degree with which this policy of leadership as distinguished from direction has worked is best reflected in the fact that the Government Section's phase of the great over-all task is now practically complete, without the issuance of a formal directive to the Japanese Government having been found necessary during the past two years of the occupation * The results speak for themselves Few of the measures taken in the reformation of the Japanese governmental structure or body of law, to conform to the requirements of a free and democratic society, bear the stamp or "stigma" of Allied force Those high concepts thus injected into Japanese life, institutions and thought should endure long after the occupation has been withdrawn, and MacArthur's philosophy, without precedent in the annals of military occupations of the past, will live as a standard and a challenge to military occupations of the future

Of the progress of Japan in which the Government Section by virtue of its responsibilities has been peculiarly interested, MacArthur commented in addressing himself to the Japanese people on January 1, 1948 [5]

[illegible] with its functions decentralized to permit and encourage a maximum of individual thought and initiative and judgment in the management of community affairs Control of every political segment has been shifted to permit the selection of a new leadership of your free choice capable of advancing democratic growth

"Socially, many of the shackles which traditionally have restricted individual thought and action have been severed and action has been taken to render the exercise of police power a matter for individual and community, rather than national, responsibility The judicial system has been freed from executive and legislative controls, and laws have been enacted to temper inordinate bureaucratic power by requiring all public officials to justify the trust of public responsibility and answer for their acts directly to the people

"Every Japanese citizen can now for the first time do what he wants, and go where he wants, and say what he wants, within the liberal laws of his land. This means that you can select your own work, and when you have completed it you can choose your own method of relaxation and enjoy-

[4]Appendix G 8a (1), General Order No 8, SCAP, October 2, 1945.

[5]Appendix F 39, General MacArthur's New Year s message to the Japanese People, January 1, 1948

*After June 1946, Government Section issued only two directives, both of which related to technical matters concerning demobilization

ment, and on your day of rest you can worship as you please, and always you can criticize and express your views on the actions of your government. This is liberty. Yet inherent in it are its obligations to act with decorum and self-restraint, and become acutely conscious of the responsibilities which a free society imposes upon its every segment.

"The future therefore lies in your hands. If you remain true to the great spiritual revolution which you have undergone, your nation will emerge and go on—if you accept only its benefits without its obligations, it will wither and go under. The line of demarcation is a simple one, understandable to all men—the line between those things which are right and those things which are wrong . . ."

Thus did MacArthur summarize the progress of the past and state the challenge of the future.

INTRODUCTION

Representative Government in Japan

By

Charles L. Kades

Deputy Chief, Government Section

Japanese representative government results from opposition originating without Japan to the system of society and government existing within when General MacArthur set foot on Japanese soil on August 30, 1945

Under that system Japan was governed by an emperor claiming absolute power by divine right as a direct descendant of the Sun Goddess. His power was derived nominally from a formal Constitution which was protected from liberal reform by so-called secret and patriotic societies (which were neither secret nor patriotic) and the established state church of Shinto [1]

The emperor *was* the state. The slightest criticism of this theory of the emperor system, such as proposing the mild thesis that the emperor was the *organ* of the state, was regarded as sacrilege and lèse-majesté

The mass of the people, chiefly workers, peasant farmers, and small merchants, were exploited and suppressed. Fundamental civil and political rights, including freedom of the press, freedom of assembly, freedom of speech, and academic freedom did not exist. Even "dangerous thoughts" were relentlessly sought out and ruthlessly suppressed.

The individual had no safeguard against arbitrary arrest or imprisonment, no right to speedy trial or arraignment, no practicable protection against search of his home or workshop, or the summary seizure of his possessions by police or procurators, and no dignity of being.

[1] Appendix C. 21, The Meiji Constitution.

The Japanese existed as an extremely regimented and exploited people governed by an hereditary dictatorship. The authority of the dictatorship was exercised through a triple oligarchy of military, economic, and bureaucratic cliques, respectively called in the vernacular *gumbatsu*, *zaibatsu*, and *kambatsu*.* This oligarchy had emerged along with the myths and legends of the emperor system in the era which began shortly after Commodore Perry sailed into Shimoda Harbor in 1854 and ended in the initial phase of the Occupation under the aegis of General MacArthur.

The Revolution of 1868

Unlike the English Revolution of 1688 and the American and French Revolutions in the eighteenth century, the Japanese "Restoration of 1868" had not been a revolution directed against despotism, family privilege, and a stratified society. On the contrary, it entrenched more firmly the forces of tyranny and caste.

Politically, the Restoration of 1868 had strengthened the ruling classes. It had substituted for the preexisting decentralized government of feudal lords and provincial clans, loosely linked by a central military administrative authority, a new and highly centralized government. The central government, with prefectural, municipal, and neighborhood branches, included in its tightly spun web a pyramidal police bureaucracy.

Economically, the Restoration of 1868 had also strengthened the ruling classes. It had substituted for their feudal economy, based upon rice levies and other feudal dues and lordly prerogatives, a modern money economy. Through industrial combinations, financial monopolies, and the ownership of 80 percent of the national resources, a dozen ruling houses gained control of the new system of mercantilism.

Socially, also, the Restoration of 1868 had substituted for the sword-wielding samurai, who had previously protected the privileged position of the ruling classes, the more subtle but not less powerful weapon of the emperor-god. Thereafter, intensive indoctrination of the masses of the people with old wives' tales of gods and demigods culminated in 1889 in the promulgation of a constitution which proclaimed that "the Emperor is sacred and inviolable," "combining in Himself the rights of sovereignty," and in the imperial rescript on education of 1890 which pronounced him "coeval with Heaven and Earth."[2]

When the 15-year-old Emperor Meiji was thus deified, property in Japan consisted mainly in the ownership of land. Like medieval European feudalism, the Japanese concept of ownership was akin to sovereignty and the tenant akin to serf or subject. At the same time as this modern myth of the emperor-god was being injected into the ignorant minds of poverty-stricken peasants and workers, other forms of wealth were becoming possible through banking and commercial activities, artistic and professional skills, and the genesis of public services reinforced by the power of taxation.

Notwithstanding this development in the political economy of Japan, economic

[2]Appendix B: 9a, Imperial Rescript on Education of 1890.

*Respectively military, economic, and bureaucratic cliques.

control and political power remained as two sides of the same coin, to the extent that, of the two principal political factions, one represented the Mitsui economic interests and the other the Mitsubishi domain The militarists and their allies of the 1930's solved the problem of converting this tightly welded oligarchy into a modern totalitarian police state by the simple expedient of investing the controlling influences in whom this property ownership was concentrated with political as well as economic power over the unpropertied, reserving to themselves the conduct of international relations

Since sovereignty was also vested in the emperor who embodied the state itself, feudalism had technically ceased to exist. However, except for this centralization of the source of political authority and the concentration in the hands of the dozen family groups of monarchial capitalism, the feudal forces in Japan continued to exert strong influence on the morals and manners of the people

The redesigning of the governmental structure into the Meiji Constitution could not itself bring about the collapse of feudalism in the ensuing half century Governmental policies were not reconciled with political or ethical principles, nor did they flow from principles. Power simply sprang from the force of the emperor and his court, the nobility, the financial barons, and the civil and military successors to the ruling overlords and their retainers Power was absolute.

The Revolution of 1945

Three years ago the Japanese still had this infallible emperor-god with an aristocratic court, ecclesiastical as well as temporal authority, granting from invisible sources visible power to a few The Japanese commonwealth consisted of a catenary pegged at one point by 18 million peasants and their families who procured little share of the crop they planted and harvested and owned none of the land which they tilled, and at the other by 18 million workers who were paid substandard wages and had forlorn hope of improving their abject living conditions

Today these same peasants are in the main freeholders or eligible to [illegible] freeholders.

Today these same workers bargain and act collectively through [illegible] representatives for their mutual self-interest toward a standard of living [illegible] and comfort

Today the same emperor-god has become merely a symbol [illegible] people He is forbidden forever to have powers of governing. [illegible] criticized in the public press His dynasty exists by the [illegible] Diet and a majority of the people.

The people through their elected representatives [illegible] obey. Sovereignty is vested in the people. And it is [illegible] the people to amend their new Constitution for the [illegible] hereditary symbol from their otherwise republican and [illegible] representative government.[3]

[3] Appendix C 21, The Constitution of Japan

If visible power today responds to invisible influence, it is the influence of behind-the-scenes political maneuvering but not imperial, ecclesiastical or economic tyranny.

The position of women has been elevated throughout the body of jurisprudence to equality with men. Both men and women are steadily shedding the complacent servility of mind instilled into them from childhood by the Shinto priests as sponsors of the imperial mythology, by the state police as protectors of the imperial authority, and by the school teachers as propagandists for the imperial way of life.

There is, of course, a difference in the attitude of the people in the city and people of the country. The people in the country are more conservative and less anxious for change than those in the cities. They retain old habits of mind and conduct more sedately, adhere to old habits of speech, and are more fearful of foreign influences than city dwellers. This contrast between dwellers in urban and rural areas is not uncommon elsewhere in the world.

Wherever they lived, however, and whatever pursuit they followed, the common people of Japan found their rights trampled and their lives despoiled in the name of the imperial way. That way of life was the antithesis of the democratic way. Its reduction was required in order to make it possible for the people of Japan to follow the democratic way. In general, the people sought a new way of life after suffering the hardships of a disastrous war and being wakened to the complete failure of those spiritual supports on which they had traditionally depended. The temper of times demanded a reduction of the power of the responsible rulers.

With enthusiasm tempered by the doubt of an age-old insulation, but spurred forward by the confidence reflected from the spirituality of General MacArthur's leadership, the people drifted into the ways of democracy. Though the establishment of representative government under the new Constitution was neither violent nor entirely voluntary, it was suited to the exigency of the times and the aspirations of the people; and no other form of government was equally suited to the emergency and the national character.

Fortunately for posterity, General MacArthur always refused to be thwarted in his great offensive for democracy by the pleas of the faint-hearted who feared to assume the risks inherent in a democracy and who portrayed the imperial way of Japanese life, with its suppression of personal liberty and individual dignity, as a quasi-religious sanctuary affording ideal refuge from the agitating forces of communism.

It was crystal clear that only by a sharp swing away from the imperial way could representative government and individual dignity emerge as realities in Japan. But every step toward the democratic way was met by the wails of imperial beneficiaries that the consequence would be "chaos, anarchy, and communism." Such was the frank tenor of their argument against the elimination of thought control and the granting of basic civil liberties, against the removal and exclusion of active exponents of militaristic nationalists from public service, against the popular election of prefectural governors and assemblies and municipal mayors and councils, against the disqualification for reelection of long-entrenched city, town and village headmen, against the dissolution of compulsory neighborhood imperial cells, against the breaking of the chains of centralized police control by making local communi-

ties responsible for the exercise of their police power, against otherwise destroying rule by centralized political power that the several communities might become the focii of political expression, against the repeal of the archaic lèse-majesté provisions of the penal laws, against the puncturing of the myths and mysticism of the Imperial Household rituals, against the installation of a modern civil service system based on merit, against the revelation of corruption in high political and industrial circles, against all measures founded upon General MacArthur's faith in the truth of Lincoln's words that "the people are wiser than their rulers "

Because of such fully expected and well-publicized opposition movement, the question is often asked and has been much discussed—Has the Occupation been successful in establishing representative government in Japan? There are various answers to this question, depending in large part upon the concept of the objectives of the Occupation underlying the replies

Thoughtful Japanese agree it was necessary for the United States to wage war against Japan after Japan attacked Pearl Harbor and, having won that war, to make as sure as humanly possible that it could never happen again. To accomplish this an occupation by Allied forces of strategic points in Japan was determined upon as the only possible method The specific course to be taken by the Allied Powers was to many none too clear. But the ultimate objective being to secure a "peacefully inclined and responsible government," the elimination of the existing system based upon the imperial way was unquestioned

In the achievement of this objective the Japanese people are acquiring not merely an abstract theory of democracy but a way of life attuned to its principles

Hence there is now developing a peculiar form of democracy adapted to a specific set of political and social institutions, a Japanese democracy which differs as much from American democracy as American democracy differs from British democracy or French democracy or the democracy of any other free nation. It gives evidence in its present embryonic state of being a dynamic democracy, the catalytic agent for which consisted of the reforms generating in General MacArthur's mind when he assumed the reins of military control.

To extinguish the imperial way without undue violence to the Japanese traditional culture has necessitated preserving some superficial defects of Japanese society which find expression in fanatical imperial devotees. This is a calculated potential threat to the development of democracy until such time as its roots become resistant to the pressure of these forces The constitutionally guaranteed freedoms of speech, of the press, of teaching, of movement and of religion will meanwhile be hampered in their exercise by understandable fear of a recrudescence of those forces after the Occupation is withdrawn.

The fact that General MacArthur's reforms have been catalytic rather than cataclysmic will unquestionably help rather than hinder their permanence. Like other peoples the Japanese attach deep sentiment to and hold in respect many of the customs, traditions, and institutions of the past. This characteristic inevitably creates a lag between the stated revolutionary objective and its actual achievement.

Even the Reign of Terror of the French Revolution did not result directly in the Reign of Virtue dreamed of by the Jacobins. And the disarmament and demilitarization of the Japanese military machine and war potential, the deconcentration

and decentralization of Japanese political and economic power, and the defeudalization of the Japanese system of family organization, of land tenure, and of labor servitude, have not automatically resulted in the immediate establishment of a democratic society. For there is no magic whereby liberty, equality and fraternity can spring full grown even from a violent indigenous revolution, still less from the peaceful reforms of a benevolent conqueror.

Strength of Japanese Representative Government

The strength and the weakness of Japanese democracy, like the strength and the weakness of American or French or British democracy, are reflections of the national character of the people. Without conceding the ultranationalistic dogma of the so-called secret patriotic societies, one can readily admit the existence of a distinctive Japanese national character which is the product of the history, the heritage and the environment of the Japanese people.

Whether political democracy artificially engendered by the external pressures emanating from a conqueror, however benevolent, will endure after the withdrawal of those pressures will depend, in final analysis, on whether changes are taking place in the national character comparable in scope to the shift from a feudal oligarchy to representative government and, most important, the momentum of such changes. For if the momentum is great enough, the change will continue subsequent t the release of the forces of compulsion. And the momentum will determine whether the political equality guaranteed by the new Constitution of Japan will carry through to an economic equality and ultimately to a social equality.

Japan is a country of industrious, energetic, homogeneous people, unpampered by great wealth in natural resource. It is a land in which the position of women has been close to serfdom, in which individual dignity and the preservation of life has counted for little, and in which individual obligation to society has had no opportunity to mature. It is a nation with a passion for equality with other nations, ambitious for universal respect, struggling to observe the proprieties of democracy in a society of great extremes between wealth and poverty without the balance wheel of a middle class.

In some respects the new political constitution and its implementing laws may not provide a true facsimile of the national character which will determine democracy's durability. But the Japanese people know they have a stake in its success. They instinctively understand and cherish its immutable principles and they seek with obvious fervence to adapt those principles to Japanese society.

It is perhaps this feeling of spiritual consecration which measures the true strength of representative government in Japan.

From the realization that the rest of the world is deeply interested in the ultimate outcome of this historical reformation, those democratic forces on the march in Japan draw quiet strength. It bespeaks the failure of any counterrevolution to

reestablish the oligarchy, at least in the imperial tradition. Although the possibility of reaction is, of course, ever present, the national pride in representative government gives assurance of permanence

In addition, the Japanese realize that their material well-being is best served by a form of representative government, if for no other reason because it is a condition of their reentry into the family of nations, and such motive is in turn reenforced by the collateral feeling of achievement in their ability peacefully to overthrow oligarchic rule while tasting the bitterness of defeat and to reconstruct their national institutions on a democratic base while a betterment of individual life from the dregs of economic distress is yet but a remote possibility

Skeptics speculate upon the reestablishment of the imperial way following withdrawal of the Occupation force upon the theory that the revolution is of external origin and therefore transient. The fallacy of this theory lies in its failure to recognize that the application of wise and farsighted statesmanship by General MacArthur has left the people wide discretion in the reformation of their institutions. He has so timed and tempered changes as to avoid violent conflict with their legitimate longings This methodology of General MacArthur is the true measure of the strength of his administration. For it has brought into direct alinement both these objectives and the well-being and aspirations of the Japanese people History will thus record him as a supersalesman of the democratic concept.

Weakness of Japanese Representative Government

In the political transition from the despotism of the past to representative government, the weaknesses which have become apparent are not necessarily characteristic of Japan but may be found in greater or less degree in any western democracy.

There is, however, one weakness, perhaps more aptly termed a threat, which is indigenous to Japan. And that is the peculiar political activity of the so-called secret patriotic societies which traditionally have wielded a profound influence upon Japanese foreign as well as domestic policy. These societies originated in February 1881 at Fukuoka, with the organization of the Genyosha, or Dark Ocean Society, named after the dark waters separating Kyushu from the eastern coast of Asia. With the Genyosha as a nucleus, the better-known Black Dragon Society was formed at the turn of the century, named after the great natural border, the Amur River, to which in East Asia, the ultranationalists hoped to extend Great Japan.

Both societies sponsored intensely nationalistic doctrines and collaborated with all those who militantly aimed to secure a position of dominance for Japan on the Asiatic mainland. They aggressively supported the Chinese Revolution of 1911, and in this respect their policy paralleled that of the zaibatsu who had furnished the capital for the China Industrial Company after earlier providing the weapons of civil war.

It has, indeed, obscured and distorted political realities to assume that the zaibatsu were nothing more than gigantic industrial combinations uninvolved in political manipulation and intrigue. The grim and inescapable fact is that the zaibatsu engaged in the nefarious business of aiding these ultranationalistic societies in gearing the nation for aggressive war.

That the societies have been destroyed and their leaders purged is certain; that the power of their economic cobelligerents must be broken in the future is equally certain. For the high hopes of maintaining a durable democracy in Japan spring from the clear and unequivocal determination to curb at the threshold any tendency toward the resurrection of any terroristic societies or the abdication to any private pressure groups of the right of the people's elected representatives to decide political, economic and social policies.

In the recently enacted law to create the office of Attorney General, the Japanese Diet provided for a special examining bureau to guard against the revival of such ultranationalistic groups, recognizing that any such revival would seriously threaten the survival of representative government. By its very nature the assigned task is exceedingly difficult for any governmental agency to perform, but the fact of its assignment reveals a vigilance to safeguard democratic liberties which is their best protection.

Within the framework of the new Constitution the basic issues in Japan today will be resolved through conflict of political parties. In this conflict as revealed during the course of the Occupation, the limiting factors slowing down the spread of the democratic ways of life have arisen more quickly and dangerously from the firmly entrenched Right than from the newly organized Left.

The political parties of the Right (the Progressive and the Liberal in the early phase of the Occupation; the Democratic-Liberal in the later phase) have frankly espoused the cause of the ruling and industrial groups and favored the concept of laissez-faire and generally the status quo ante.

On the other hand, the only substantial political party of the Left (the Social Democratic Party whose members vary from slightly left to well left of center) has stood for the rights of the workers, tenant farmers, small merchants and in general, the underprivileged.

The other major political parties, the Democratic Party and the Peoples' Cooperative Party, were in 1948 amalgamations of various factions, mainly based on personal loyalties, but in general following a course of moderate democracy with an opportunistic pattern, bending like the bamboo in the breeze of domestic public opinion. The minor Communist Party has merely endeavored to shape its policy in harmony with the party line abroad.

The threat to democratic institutions from undermining efforts of the extreme Right is ever present. It is somewhat of a phenomenon that in this it finds common cause with the Communists who, masquerading under the name of democracy, also seek a totalitarian result. Hence, it has been clear from the beginning that, if democratic institutions are to survive in Japan, the forces supporting such institutions must repel those deeply entrenched in domestic tradition on the extreme Right and those spearheading foreign pressure on the extreme Left.

These forces of the extremes find a willing and powerful ally in a traditional

Japanese bureaucratic clique which holds to the belief that the people are unable to judge for themselves that which is best for them. It holds to the view that it alone is capable of directing the course of political action and concludes that the people's representatives, however freely elected to constitute the National Diet, are intellectually incompetent to manage the complex and delicate business of government.

This philosophy of the folly of individual freedom and the infallibility of the bureaucratic inner circle was reduced even in pre-Meiji days to a phrase, *kanson mimpi*, denoting "government-over-people," or "government predominant, people subservient."

This traditional bureaucratic viewpoint, shared with characteristic self-effacement by some of the people's representatives themselves when supported by forces of either or both of the two political extremes, presents, of course, the greatest danger to representative government. It has led to apathy in the legislative process, lack of understanding of the essentials of public hearings and parliamentary debates, a tendency to shift the legislative responsibility to bureaucratic "experts" and above all, to a breakdown in dynamic and vigorous leadership in all branches of government

It is perhaps natural that in a country of insular isolation, governed by a feudalistic oligarchy, a concept such as *kanson mimpi* should continue to retard the development of representative governmemt

Like other governments, the Japanese government contains conscientious career officials devoted to service in the interests of the people. These officials of permanent tenure frequently develop efficient administrative techniques, demonstrate initiative, originality and resourcefulness, and recommend progressive policies the credit for which is often snatched by politically-minded superiors Many times such officials are invidiously termed "bureaucrats" by political leaders who would arrogate to themselves power which seeks to overawe the career administrator

The Japanese higher bureaucracy, however, views with distrust and disdain public-spirited career officials of this type who seek to serve the people It constitutes a clique in which personal loyalties are based on past associations, the "old school tie," and a definite belief in the superiority of the elite. In fact, 85 percent of the executive officials in the bureaucracy were in 1948 graduates of the law department of Tokyo Imperial University which maintained a monopoly on all higher positions in the public service Apart from this exclusive alumni prerequisite, seniority instead of merit has been the test of advancement, and the maintenance of the institutional pattern of bureaucratic control, instead of accommodation to the principle that the public official is the servant of the people, has been the end to be achieved. These higher bureaucrats, because of their entrenched political position, generally favor the reactionary Right and are inclined to reject republican ideals as inconsistent with the national character.

There have, however, already been indications of a growing legislative resistance against this bureaucratic assumption of power and the National Diet increasingly is asserting its own constitutional prerogatives and responsibility in the affairs of government. Healthy signs appear in the Diet's refusal to permit legislation by Cabinet order in lieu of its own enactments

Just as the Japanese people will not be well served as long as the National Diet

permits rule by the higher bureaucracy, so they will not be well led as long as political corruption is condoned. That Japan has no monopoly on corruption among the nations of the world is self-evident. That corruption can exist in a democracy as in a dictatorship cannot be gainsaid. The evil in, but not peculiar to, Japan has been the acceptance of political corruption without any active endeavor to extinguish it or even to punish the perpetrators.

The low standard of political morality may be ascribed to various causes. Superficially it may seem to spring from lack of interest by the people in public affairs, a low level of public salary schedules, or the complacent acceptance by otherwise ethical elements of the community of official corruption because of its traditional place in public life.

Public office as a public trust is a novel notion not yet fully accepted as an essential element in democracy; politicians and industrialists alike treat government as a means of private gain. The axiom of the Tokugawa Shoguns that "punishment shall not be administered to the gentleman, nor courtesy to the commoner,' 'has not been wholly repudiated.

There perhaps lies the key to corruption of contemporary Japan. It is not so much that political corruption exists as that it has a feudal genesis. It is not so much a seamy side of Japanese democracy as the persistence of a feudal influence hampering the growth of representative government. It is another hangover of the Meiji era, rooted like the bureaucracy in the rule of men rather than the rule of law.

There was no rule of law to be invoked against misfeasance or malfeasance in office. There were no criminal penalties and no political considerations to induce compliance with any code of ethics, except a moral compulsion to share the loot with those in the pyramid of power to whom loyalty was owed or from whom it was demanded.

This primary obligation of loyalty to one's leader and to one's followers superseded considerations of the public interest and persists, particularly in local areas of Japanese politics, today.

Punitive measures recently taken by procurators and the pitiless exposures recently made by National Diet committees appear to be making the elimination of this feudalistic corruption a matter of time and a problem of ethics. It is in itself no more a threat to Japanese representative government than any other residual feudal custom.

In form feudalistic corruption may differ little from political corruption, but its essence requires inculcating an indignation in the minds of the people which will be aroused by the spotlight of publicity on political brigandage.

Once the people come to the view that the moral precepts of honest government are an attribute of democracy and afford an important guarantee of individual protection, that view will become an integral part of the national character.

The ultimate form of the national character will, of course, depend upon the character of the people but more immediately upon the character of the leaders of the people. Just as in the past the bureaucracy failed to serve the people well, so their leaders failed to govern well.

The most hopeful sign of developing strength in future leadership is the unmeasured criticism of prevailing political conditions and the organized, methodical

action to unmask and punish corrupt political and business leaders This movement, originating with exposures in the Japanese press and nurtured characteristically by General MacArthur, has already educated many in the workings of the democratic process. More than all else it is giving emphasis to the constitutional mandate establishing the equality of all men under the law.

On Balance

Perhaps it may soon be said of Japanese democracy, as Bryce said of American democracy, that the reason it is not better is because it is so good. It remains to be seen, however, whether leaders will arise who will succeed in fostering the sense of social conscience and public responsibility without which a democratic republic cannot be realized Perhaps the new dignity of the individual, notwithstanding the searing social inequalities of caste and class and the challenge of his present poverty, will produce in response such a new and better leadership.

In any event, it is safe to predict that Japanese institutions have changed irrevocably from the past The toughness of new laws, new customs, new institutions has yet to be demonstrated, but that by and large the Japanese people are behaving differently, that their habits and attitudes have undergone remarkable transformation, and that their eagerness to experiment with new institutions is evident, will not be disputed even by the most hostile critics. The past has not been too powerful to be pruned from the present.

Whether the inevitable counterrevolution, signals of which have already appeared, in the so-called "flux of political parties," will gain ground depends, internally, upon the depth of faith in the freedom which the Japanese people have tasted for the first time and their willingness to fight the forces of reaction for the preservation of that freedom and, externally, upon the good faith of the nations whose statesmen promised, in the Atlantic Charter, to "afford to all nations the means of dwelling in safety within their own boundaries," to secure to all states "access, on equal terms, to the trade and raw materials of the world," to "bring about the fullest collaboration of all nations in the economic field," and to "afford assurance that all the men in all the lands may live out their lives in freedom from fear and want."

Representative government in Japan is confronted with the same problems which for 80 years baffled its imperial government. The problems are no less difficult to solve than before and not much different in nature.

Inside Japan the old problems of maximum production, of more equitable distribution of wealth, and of density of population, require stupendous effort to solve. Outside Japan the old problems of promoting international trade, of providing procedures for the orderly settlement of international disputes, and of preventing war, challenge the genius of statesmen everywhere.

Japan's right to live under a government of its own choosing will continue to be exercised in favor of representative government only if the peace settlement does

not create a sense of oppression, inferiority, and hopelessness within the collective Japanese mind.

The problems inside Japan and outside Japan are, therefore, intimately related and no appraisal can be made of the permanence of representative government within Japan without taking both sets of problems into account.

Japan has not been freed from political conflict, from economic desolation, or from social unrest solely by promulgating the new Constitution, by creating representative government, or by pursuing the ways of democracy.

The chaos and confusion which might well have followed Japan's collapse have been cushioned, principally by the benevolent occupation and American material assistance.

But when the period of m'litary occupation has ended the new and better political and social structure in Japan can be maintained only if some adjustment, if not solution, is devised for its pressing internal and external problems.

Political democracy in Japan depends very much upon whether the zaibatsu and other entrenched economic and financial power is dispersed or unwise y permitted to survive. For without economic democracy political democracy cannot exist.

Postwar democracy in Japan, in which the industrial, financial and political groups thought Katayama's innocuous departure from complete laissez-faire doctrine a greater danger than private monopoly, would surely have been a feeble, if not corrupt, movement without General MacArthur's inspiration, encouragement and constant leadership.

If there is to be a democratic Japan, less feeble than now and more inclined to cherish the new institutions which emerged from its bloodless revolution, it is certain that the national economic order must be integrated with an international economic order affording its 80 million inhabitants an adequate standard of living, despite its inevitable food deficit. Such an economic order must also provide the access to the raw materials Japan needs and both the Atlantic Charter and the Potsdam Declaration pledge. Otherwise free private enterprise and political democracy cannot survive.

For want of raw materials and markets, business would stagnate. The new owner-cultivators would find their 2½-acre freeholds facing poverty or perhaps foreclosure with no available remedy. Industrial workers would face a future with long periods of unemployment and no hope of social security. Free trade unionism, discredited by communist leadership, would be easy prey for renewed suppression.

And accompanying such an economic collapse would be a loss of faith in the ways of democracy in general and in the slow, cumbersome, parliamentary procedures of representative government in particular.

In such an hour of disillusionment a demagogic leadership would arise with eloquence and force to strike the chord of tradition, by appealing to the national sentiment for the restoration of the old despotic order.

This is the problem of the future of representative government in Japan. The obviousness of the challenge calls for (1) a cooperative international attitude with a view to an equitable economic and social, as well as political settlement, (2) an avoidance of sweeping scepticism of Japanese sincerity and reformation,

rooted in emotional hostility engendered by war, and (3) a recognition that the present imperfect democratic system rendered workable by adherence to certain cherished tradit ons and ceremonies is preferable to a perfect democratic symmetry which would fail to work because not synchronized with such national habits of political utility

Thus, 3 years after the surrender Japan has erected a system of government with the consent of the governed and in which the governed are fully represented, and a system of society in which personal freedom, individual dignity and equality of opportunity are acknowledged Once ownership of the means of production has been widely distributed, once the responsibilities of power and property have been thoroughly enforced, once the principles of the rights and the obligations of citizenship are taken for granted, representative democracy will have become deeply imbedded in Japanese life



General Headquarters, Tokyo

SECTION 1

Control of Japanese External Affairs

I. Basis for Action

When Japan surrendered its governmental machinery was intact Included in that machinery were the agencies for administering control of overseas possessions and conducting official relations with other countries There were governments general in the Home Ministry for the administration of Korea, Formosa, and Karafuto, the Greater East Asia Ministry for the orientation and coordination of the political, economic and cultural policies of the nominally independent countries adhering to the coprosperity sphere, and the Ministry of Foreign Affairs for the conduct of official relations with countries with which Japan was not at war

Contact and communication with the outside world did not cease on August 14, 1945, when the Japanese Government, through Switzland, notified the governments of the United States, Great Britain, France, and China that the Emperor of Japan had declared Japan's acceptance of the Potsdam Declaration and was prepared to insure the signing of surrender terms Japanese governmental agencies and representatives abroad continued to carry on their functions as did foreign diplomatic and consular missions in Japan

To permit the Japanese Government to continue to exercise authority over areas which Japan had acquired by force, duress or stealth and which the Allies had repeatedly declared were to be taken from her would have been inconsistent with the purposes of the Occupation [1] Similarly to permit the Japanese Government to continue official relations with other governments through its diplomatic and consular representatives abroad and through foreign representatives in Japan would have been inconsistent with Japan's position as a defeated and occupied power and incompatible with the Supreme Commander's authority. But until Japan and its outlying possessions had been physically occupied by the Allies and the Japanese Government satisfactorily brought under the Supreme Commander's control there was no effective way of insuring severance of Japan's grip on its colonial and occupied areas or of its official relations with other countries. Thus among the first tasks of the Occupation, perhaps second in priority only to disarmament and demobilization, were these two: (1) severance of Japanese governmental and administrative authority and control over areas out-

[1] Appendix A 1, Cairo Conference, December 1, 1943, 3, Potsdam Declaration, July 26, 1945

side Japan proper, and (2) severance of direct official relations between the Japanese Government and other governments. These tasks were, in fact, explicitly assigned to the Supreme Commander in the Joint Chiefs of Staff's basic directive for the occupation and control of Japan.*

II. Governmental Separation of Japan from Outlying Areas

The physical separation of Japan from most of its overseas territories was accomplished at the very beginning of the Occupation by the dispositions of surrender. The decisions governing the allocation of responsibility among the military commanders of the Allied Powers for the physical occupation or liberation of the various components of the Japanese Empire and its occupied or controlled areas had been previou ly made at governmental levels. In conformity with these decisions, General Order No. I, issued by the Supreme Commander for the Allied Powers on September 2, 1945, ordered all senior commanders of the Japanese Land and Sea Forces at home and abroad to surrender to the senior Allied commanders for the areas in which those Japanese forces were situated.[2] Consequently, of a l the areas under Japanese control at the time of surrender, only Japan proper (the four main islands plus adjacent minor islands), South Korea and the Ryukyus came under the physical control of General MacArthur as Commander in Chief, Un ted States Army Forces, Far East. Formosa and the occupied areas of China were returned to Chinese control; Manchuria, North Korea, Karafuto and the Kuriles came under Russian control; Japanese-occupied areas in Southeast Asia and the East Indies came under British control; Borneo, British New Guinea, the Bismarks and the Solomons came under Australian control and, lastly, the Bonins and other Pacific islands came under the control of the United States Pacific Fleet. Thereafter the Allied military leaders proceeded to install military governments or to return governmental authority to the local civil governments in their respective areas of responsibility.

In the United States-occupied portion of Korea, General MacArthur as Commander in Chief, United States Army Forces, Pacific, established military control and assumed all powers of governmen on September 7, 1945, in Proclamation No. 1 issued from General Headquarters, United States Army Forces, Pacific, then located in Yokohama.[3] These powers were, however, delegated to the Commanding General, United States Army Forces, Korea (XXIV Corps), who established a United States Military Government in Korea separate from the Supreme Commander's military control of Japan. The administration of the Ryukyus also remained separate from that of Japan since a United States Military Government had been established in Ryukyus before the surrender. In Japan proper the Japanese Government was permitted to retain its powers of civil government, subject to the Supreme Commander's military control and supervision. The area within which the Japanese Government's

[2]Appendix B: 1a, General Order No. 1, SCAP, Sept. 2, 1945.

[3]Appendix B: 1c, Proclamation No. 1, AFPAC, Sept. 7, 1945.

*JCS 1380/15, November 1, 1945, provided as follows:

"1. (b) Japan, as used in this directive, is defined to include: the four main islands of Japan: Hokkaido (Yezo), Honshu, Kyushu and Shikoku and about 1,000 smaller adjacent islands including the Tsushima Islands."

"4. (d) You will take appropriate steps in Japan to effect the complete governmental and administrative separation from Japan of (1) all Pacifc Islands which she has seized or occupied under mandate or otherwise since the beginning of the World War in 1914, (2) Manchuria, Formosa and the Pescadores, (3) Korea, (4) Karafuto, and (5) such other territories as may be specified in future directives."

civil authority was effective corresponded roughly to the areas of tactical responsibility assigned to the Commanding Generals of the United States Sixth and Eighth Armies

Among the instructions contained in the Supreme Commander's Directive No 2, dated September 3, 1945, to the Japanese Government, was one to the effect that the Japanese would maintain intact and continue in operation with existing personnel all overseas and internal communications facilities, including cables, radio telegraph, radio telephone and radio broadcasting facilities, providing access to those facilities by the Supreme Commander's representatives for purposes of supervision and censorship [4] These facilities were utilized in the earliest phase of the Occupation to transmit instructions to and receive information from Japanese military and civil officials in the former Japanese-controlled areas outside of Japan proper Although the Allied military and civilian authorities in those areas promptly began to remove Japanese officials from positions of authority, the process took some time since these officials were utilized to transfer authority, wind up Japanese affairs and aid in the initial preparations for the repatriation of Japanese from those areas

Due in part to this circumstance and in part to the absence of specific ins ructions to the contrary, there was at first some confusion in the minds of the Japanese authorities as to the extent of the Japanese Government's authority over its officials in former occupied areas Thus, during the latter part of September 1945, it came to the attention of General Headquarters that the Japanese Government had included a number of Japanese officials still located in Korea in a promotion list of civil service officials In a brief memorandum delivered to the Japanese Government on October 2, 1945, the Supreme Commander informed that Government that (1) United States Military Government was the sole authority in Korea, (2) the Japanese Government was not to attempt to exercise any administrative authority in Korea and (3) all the purported promotions of Japanese officials in Korea were ineffective [5]

Although by the end of 1945 the governmental and administrative separation from Japan of the areas outside of Japan had, to a great extent, been accomplished in fact by the Allied Occupation of those areas, censorship intercepts indicated that the Japanese Government was still communicating with Japanese officials in certain of these outlying areas in such manner as to constitute an attempt to exercise governmental and administrative authority over those officials This pointed up the need for a definitive and comprehensive directive to complete the separation Therefore, after necessary coordination among the interested staff sections of General Headquarters, a memorandum was issued by the Supreme Commander to the Japanese Government on January 29, 1946, directing it to cease exercising or attempting to exercise governmental or administrative authority over any area outside of Japan or over any government officials or any other persons within such areas [6] In the same directive the Japanese Government was forbidden to communicate with government officials and employees or with any other persons outside of Japan for any purpose other than certain routine functions authorized by the Supreme Commander A definition of Japan was provided coinciding with the boundaries of the area administered directly under the Supreme Commander. The Japanese Government was informed that the directive was not to be construed as an indication of Allied policy relating to the ultimate determination of the identity of the "minor islands" referred to in the Potsdam Declaration as those over which Japan would be permitted to retain sovereignty Finally, with a view to abolish-

[4]Appendix B 1b, Directive No 2, SCAP, Sept 3, 1945

[5]Appendix B 4a, Promotions of Civil Service Officials in Korea, SCAPIN 88, October 2, 1945

[6]Appendix B 4c, Governmental and Administrative Separation of Certain Outlying Areas from Japan, SCAPIN 677, January 29, 1946

ing Japanese governmental agencies whose purpose was the control of areas outside of Japan, a report of all agencies in Japan whose functions pertained to areas outside of Japan as defined in the directive was requested.

The directive of January 29, 1946, served to clarify a number of administrative Occupation problems, but an unforeseen complication arose early in February 1946 in connection with the Izu Islands which, although strung in a chain stretching many miles south of Tokyo Bay, had for many years been administered as part of Tokyo-to and had on them about 170 officials sent from Japan proper. Under the dispositions of surrender and General Order No. 1 these islands came under the jurisdiction of Commander in Chief, United States Pacific Fleet, but the United States Navy had not established military government over these islands and up to the issuance of the directive by SCAP they had continued to be administered as part of Tokyo-to[7] Application of the directive cut these islands off from the Japanese ration distribution systems, government pay rolls, banking facilities and schools. The choice was between the establishment by the United States Navy of a military government for the Izu Islands so that they could be governed separately from Japan or the revision of the administrative boundaries of Japan to include these islands so that they could be administered by the Japanese Government as before. The question was referred to the Commander in Chief, United States Pacific Forces, Far East, in Hawaii, who promptly recommended to the Chief of Naval Operations in Washington the transfer of jurisdiction over the Izu Islands north of 30° North Latitude to the Supreme Commander for the Allied Powers. On March 20, 1946, the Joint Chiefs of Staff made the recommended transfer and on March 22, 1946, a Memorandum was issued to the Japanese Government amending the directive of January 29 to include the Izu Islands and the Nampo Islands, north of and including Lot's Wife, *within the area defined as Japan for the purpose* of administration by the Japanese Government under SCAP supervision.[8] Again the Japanese Government was informed that these administrative adjustments were not to be construed as an indication of Allied policy relative to the ultimate determination of the minor islands referred to in the Potsdam Declaration. On March 30, 1946, the Commanding General, Eighth Army, was notified that the Izu Islands were to be administered by the Japanese Government under the Supreme Commander's supervision in the same manner as the rest of Japan. Thereafter the Eighth Army exercised military government responsibility over the islands *through its Tokyo-Kanagawa Military* Government Team.

III. Severance of Direct Relations between Japan and Other Countries

The second task in the control of Japanese external affairs was the severance of direct relations between the Japanese Government and other governments. This entailed (1) the closing of Japanese diplomatic and consular establishments abroad and recall of their personnel, (2) transfer of Japanese diplomatic and consular property and archives in foreign countries to Allied custody, and (3) suspension of direct contacts between diplomatic and consular representatives in Japan and the Japanese Government.

[7]Appendix B: 1a, *General Order No. 1*, SCAP, September 2, 1945.

[8]Appendix B. 4f, Governmental and Administrative Separation of Certain Outlying Areas from Japan, SCAPIN 841, March 22, 1946.

In the execution of this task some difficulties were encountered which required use of the Supreme Commander's authority over the Japanese Government to surmount. The origin of these difficulties lay in an early misconception of the Japanese as to their postsurrender position in relation to the victors—a misconception based evidently on the assumption that Japanese Government's acceptance of the Potsdam Declaration established a contractual relationship between it and the Allies The tenuousness of such an assumption should have been obvious from the unequivocal statement with which the United States Government, on behalf of the Four Great Powers, on August 11, 1945, replied to the Japanese Government's note of August 10, 1945, attempting to qualify its acceptance of the Potsdam Declaration It was in reply to this United States statement that the Japanese on August 14, 1945, transmitted their final acceptance and signified their readiness to sign the terms of surrender [9] From any objective point of view there should have been no further question that the relations of the Allies with Japan rested on an unconditional surrender, not on a contract Any possible further misconception as to Japan's status vis-à-vis the Allied Powers or as to the authority of the Supreme Commander for those powers should have been dispelled when the Instrument of Surrender was signed on September 2, 1945, for by the terms of that instrument the Japanese agreed that from the moment of surrender the authority of the Emperor and the Japanese Government to rule the State should be subject to the Supreme Commander for the Allied Powers, who would take such steps as he deemed proper to effectuate the surrender terms [10]

The authority given to the Supreme Commander to carry out his mission under Allied policy directives was supreme and clearly not subject to question on the part of the Japanese as to its scope.[11] True, he was instructed to exercise control of Japan through the Japanese Government to the extent that this proved satisfactory for his purpose, but this did not prejudice his right to act directly, or to use force, if necessary The statement of principles contained in the Potsdam Declaration was to be given full effect, not because the United States and its Allies were bound in a contractual relationship with Japan, but because the Potsdam Declaration was a part of Allied policy enunciated in good faith and intended to be carried out in good faith

1. Diplomatic and Consular Missions Abroad

Immediately upon receiving notice of Japan's surrender the United States Government, in concert with its Allies, moved to secure the closing of Japanese diplomatic and consular missions in neutral countries and the transfer to Allied custody of the property and archives of those missions and other property and archives in the hands of Japan's protecting powers in Allied countries, Sweden and Switzerland On August 14, 1945, the United States Department of State requested the Japanese Government, through the Swiss, to make the necessary transfers Simultaneously, the Allied representatives in foreign countries were instructed to assume custody The Japanese Government's reply to this request was that it regretted that it could not comply, on the ground that it did not accord with any of the terms of the Potsdam Declaration. In the latter part of August 1945, when the Japanese Legation in Afghanistan was ordered closed by the representatives of the Allied Powers, the Japanese Government represented to the Allied Governments that this was improper, for the same reason United States and Allied representatives in other countries encountered sim-

[9] Appendix A 7, Final Japanese Acceptance

[10] Appendix A 9, Instrument of Surrender

[11] Appendix A 12, Authority of General MacArthur as Supreme Commander for the Allied Powers

ilar difficulties. In the absence of instructions from the Japanese Government to its representatives or to its protecting powers abroad, diplomatic means were inadequate to secure the required actions. As late as mid-October 1945 the Supreme Commander was informed by the Department of State that in neutral countries Japanese diplomatic archives were still unsealed and the Japanese were acting as if no surrender had occurred. In countries where Sweden and Switzerland were acting as protecting powers for Japan, they were not permitting the Allies to have access to Japanese diplomatic archives.

To clarify this situation required an order from the Supreme Commander to the Japanese Government. Accordingly, on October 25, 1945, SCAP by written memorandum directed the Japanese Government to instruct its missions in neutral countries to (1) transfer their property and archives to the custody of Allied representatives in those countries, (2) request Sweden and Switzerland to do likewise in those countries where they were acting as protecting powers for Japan and (3) recall all Japanese diplomatic and consular representatives in neutral countries.[12]

The initial reaction of the Japanese to this directive reflected their early misconception as to the Japanese Government's status in relation to the Allies, but it was not lasting. The Japanese Foreign Ministry's first telegram on the subject to its ministers in Sweden, Switzerland, Portugal, and Afghanistan and to its Consul General in Dublin, dispatched on October 26, 1945, advised them briefly of the contents of the SCAP directive of the preceding day, but added that the Government intended to ask for an explanation as to the grounds on which the Allied demands had been made. A memorandum by the Foreign Ministry, submitted informally to General Headquarters, cited the American Government's initial request of August 14, 1945, and the closing of the Japanese Legation in Afghanistan about 2 weeks later by order of the Allied representatives in that country, and the Japanese Government's questioning of these actions.[13] In view of the presentation of the directive "before hearing any word from the Allied Powers as to their views on the matter," the Japanese Government sought "information on the best ways of insuring a more faithful execution of the terms of the surrender instrument so as to recover Japan's position among the nations." The memorandum further stated that the recall of Japanese representatives in neutral countries meant "an actual severance of diplomatic relations between Japan and those countries with which she maintains friendly relations," and that it constituted "a step backward from the goal of cementing amicable relations among nations and securing peace to the world." It expressed the hope that, after it had been determined that the presence of Japanese representatives in neutral countries would "not be harmful to the Allied Powers," they might be allowed "to resume their normal routine functions as before" and requested that this desire of the Japanese Government be conveyed to the Allied Powers. No reply was made by SCAP to this memorandum but a copy was forwarded to Washington for the information of the Government. The Japanese were informed that prompt and complete compliance with the directive was expected. On October 31, 1945, the Japanese Government, with its formal acknowledgment of the SCAP's directive of October 25, enclosed copies of telegrams which it had dispatched on October 31 to its ministers abroad in which it advised those ministers of its intention to take the measures required by the directive of October 25, and instructed them to proceed without delay to effect the required actions. There followed a number of conferences with officials of the Japanese Foreign Ministry for the purpose of clarifying necessary

[12] Appendix B: 4b, Transfer of Custody of Diplomatic and Consular Property and Archives, SCAPIN 189, October 25, 1945.

[13] Appendix B: 1h, Japanese Foreign Office Memorandum on Recall of Diplomatic Missions.

details for full implementation of the directive, checks of reports of compliance submitted by the Japanese Government against information from the United States Department of State based on reports from Allied representatives in foreign countries, and in some cases supplementary instruction to Japanese representatives abroad The two protecting powers for Japan were authorized to continue to exercise routine functions of protection of Japanese nationals, care of displaced Japanese persons, etc , and for these purposes arrangements were made to make the Japanese records taken over by the Allied Powers in various countries accessible to the neutral protecting powers

The Japanese Mission to the Vatican required separate treatment In a SCAP memorandum dated October 31, 1945, the Japanese had been given definitions of the United Nations, neutral, enemy and other nations, for the purpose of applying SCAP instructions [14] The Vatican, because it is not considered by the United States Department of State as a government in the usual sense, had not been included in this directive as falling under any of the categories Consequently, the Japanese emissary to the Vatican was not recalled simultaneously with the other ministers pursuant to the directive of October 25, 1945 The Japanese themselves considered him in a special category and were prepared to leave him at his post unless specifically instructed to the contrary. Despite the special status of the Vatican, the continued presence of a Japanese mission there was considered anomalous in view of Japan's status as a defeated and occupied nation Consequently, after consultation with the Joint Chiefs of Staff in Washington, the Supreme Commander, on December 15, 1945, notified the Japanese Government that the directive of October 25, 1945 was to be applied to the Japanese Mission to the Vatican

2. Foreign Missions in Japan

The final measure for the control of Japanese foreign relations was the suspension of official contact between foreign missions in Japan and the Japanese Government This was ordered in a SCAP memorandum issued on November 4, 1945 [15] Again the initial reaction of the Japanese Foreign Ministry indicated a tendency to quibble, but again the tendency did not persist On November 21, 1945, in the memorandum acknowledging receipt of the SCAP memorandum of November 4, the Japanese Government reported that all necessary measures to carry out the directive had been taken Concurrently neutral and other diplomatic representatives in Japan were informed by General Headquarters that any matters which they felt necessary to discuss with the Japanese Government should be submitted to General Headquarters, Supreme Commander for the Allied Powers for such action as the Supreme Commander deemed appropriate

By the end of December 1945, the Japanese Government had no relations with the outside world except through the Supreme Commander, and arrangements were being made for the repatriation of Japanese representatives in foreign countries

[14] Appendix B 4c, Definitions of "United Nations," Neutral Nations," and Enemy Nations, SCAPIN 217, October 31, 1945.

[15] Appendix B 4d, Official Relations Between Japanese Government and Representatives of Neutral Nations, SCAPIN 237, November 4, 1945.

SECTION II

Removal of Ultranationalists

Significance

The removal and exclusion of active exponents of militarism from important positions in the public life of Japan was probably the most widely discussed program of the Occupation. As was to be expected, those Japanese who were adversely affected disclaimed past responsibility, protested their personal liberalism and their friendship for the Allies, or represented that they were indispensible to the efficient functioning of government or business. In this they were supported by friends and sympathizers, including some Americans and other Allies. Removal of "the best brains of Japan," they charged, would create resentment and hostility to Allied objectives even among those disposed to be friendly; an underground resistance would be fostered; the Government would be weakened; "chaos, confusion and communism" would result.

As soon as the physical disarmament of Japan was well advanced, the Supreme Commander proceeded with the task of moral disarmament. The ultimate goal was to establish in Japan, through the freely expressed will of the Japanese people, a fully representative, peacefully inclined and responsible government. The removal of ultranationalists and militarists from positions of power and influence in public life was a logical first step. This objective had been envisaged at Potsdam and was set forth in the initial postsurrender basic policy directive of the United States Joint Chiefs of Staff to the Supreme Commander. But even if this were not so, even if the removal of undesirable persons had not been explicitly required by the terms of the basic directive, given the paramount objective in the political field, any other course would have been unthinkable. For how could the Allies, having chosen to utilize for Occupation purposes the existing Japanese governmental and administrative machinery, entrust the operation of that machinery to the leadership responsible for Japan's previous aggressive policies? As General MacArthur stated, "any other course would have been to ignore those very causes which led the world into war and by so doing invite the recurrence of future war."[1]

The basic policy decision having been made at governmental levels, the Supreme Commander's responsibility was to execute it. In doing so, he exercised the normal executive discretion of a field commander as to timing and method. Accordingly, the program was timed, phased and tempered to meet the developing political, social and economic situation

[1] Appendix B: 51, General MacArthur's comment on Newsweek article, January 31, 1947.

in Japan under the Occupation Thus the first phase, begun early in 1946 and finished by the summer of that year, resulted in the removal and exclusion of approximately 1,000 incumbents of and candidates for important positions in the national government. This phase included a preliminary screening of all Diet candidates in the April 1946 elections and final screening of the successful candidates before the Diet met for business in June of that year. This session was to pass on the new Constitution announced by the Japanese Government in March 1946, and to enact other important legislation, much of it connected with Occupation objectives.

The second phase, designed to remove undesirable persons from positions of leadership in the prefectural, city and village governments, was timed to coincide with the general elections of April 1947, when for the first time the people voted for their local chief executives and assemblymen as well as for Diet members During this phase, some 7,000 persons were removed or barred from important offices, principally in the local governments The third and last phase, begun late in 1947, applied to important positions in preeminent private financial, commercial and industrial enterprises and in the mass media of public information During this phase about 600 persons were removed from certain key positions in the economic field and 200 from the field of public information

The essential purpose of the purge program was to remove from key positions in the political, social and economic structure of Japan those persons who could not be trusted to guide the future development of Japan solely toward peaceful ends From this it followed that the removals were not sweeping or drastic, but selective, both as to the categories of persons who were affected and as to the fields and levels of authority from which they were excluded It also followed that no punitive measures attended the action of removal and exclusion Thus there was no internment such as had been authorized in the basic directives from Washington, nor was there any confiscation of properties Broad fields of endeavor in the professions and in business were left open to engage the talents of these persons When the program was completed in May 1948, there was not the slightest evidence that any of the dire predictions of its critics had ever had any plausible basis There was no chaos, no confusion and very little communism On the contrary, the government had made tremendous strides toward realizing the substance of democratic reforms enacted pursuant to the Potsdam Declaration, and business had achieved a substantial degree of vitality in contrast to the condition of paralysis prevailing when the Occupation began A new leadership had arisen in the political, social and economic spheres, free of war guilt, higher in quality than that which was at the helm in August and September 1945, and with its eyes firmly fixed on the construction of a hopeful future

Part I. The Political Phase

I. The Basis of the Purge

1. Potsdam Declaration

When on July 26, 1945, following the conference at Potsdam, the chief executives of the United States, China, and Great Britain made a final offer to Japan in the name of "the hundreds of millions of their countrymen," they stated the determination of the Allied Powers to eliminate the alliance of military force, feudal privilege, concentrated economic power and government-controlled priestcraft that ruled Japan.[2] Of the six basic terms of surrender that were offered to Japan by the Potsdam Declaration, the first read:

"There must be eliminated for all time the authority and influence of those who have deceived and misled the people of Japan into embarking on world conquest, for we insist that a new order of peace, security and justice will be impossible until irresponsible militarism is driven from the world."

When on September 2, 1945 the Japanese delegates signed the instrument of surrender they agreed to

". . . hereby undertake for the Emperor, the Japanese Government and their successors to carry out the provisions of the Potsdam Declaration in good faith and to issue whatever orders and take whatever action may be required by the Supreme Commander for the Allied Powers or by any other designated representative of the Allied Powers for the purpose of giving effect to that Declaration."[3]

The address by General MacArthur which followed the surrender ceremony aboard the U. S. S. *Missouri* contained the following statement of the basic philosophy which was to guide the Occupation:

"We are committed by the Potsdam Declaration of principles to see that the Japanese people are liberated from this condition of slavery. It is my purpose to implement this commitment just as rapidly as the armed forces are demobilized and other essential steps taken to neutralize the war potential. The energy of the Japanese race, if properly directed, will enable expansion vertically rather than horizontally. If the talents of the race are turned into constructive channels, the country can lift itself from its present deplorable state into a position of dignity."[4]

2. U. S. Government Policy

General MacArthur already had the United States Initial Post-Surrender Policy for Japan prepared jointly by the Departments of State, War and Navy and radioed from Washington on August 29, 1945. This fundamental policy document directed that:

"High officials of the Japanese Imperial General Headquarters and General Staff, other high military and naval officials of the Japanese Government, leaders of ultranationalist and militarist organizations and other important exponents of militarism and aggression will be taken into custody and held for future disposition. Persons who have been active exponents of militarism and militant nationalism will be removed and excluded from public office and from any other positions of public or substantial private responsibility. Ultranationalistic or militaristic social, political, professional and commercial societies and institutions will be dissolved and prohibited. Militarism and ultranationalism, in doctrine and practice, including para-military training, shall be eliminated from the educational system. Former career military and naval officers, both commissioned and noncommissioned and all other exponents of militarism and ultranationalism shall be excluded from supervisory and teaching positions."[5]

3. Joint Chiefs of Staff Directives

On November 3, 1945 the Joint Chiefs of Staff authorized General MacArthur to use broad powers in dealing with Japan's en-

[2]Appendix A: 3, Potsdam Declaration, July 26, 1945.

[3]Appendix A: 9, Instrument of Surrender, September 2, 1945.

[4]Appendix F: 1, Address to Surrender Delegates Aboard the Missouri, September 2, 1945.

[5]Appendix A: 11, U. S. Initial Post-Surrender Policy for Japan.

trenched old guard A directive to the Supreme Commander for the Occupation and Control of Japan dispatched on that date reads.

"In no circumstances will persons be allowed to hold public office or important positions of responsibility or influence in public or important private enterprise who have been active exponents of militant nationalism and aggression, who have been influential members of any Japanese ultranationalistic, terroristic or secret patriotic society, its agencies or affiliates, who have been influential in the activities of the other organizations enumerated in paragraph 5g below, or who manifest hostility to the objectives of the military occupation You will assure that at all times, so long as the present form of government is retained, the posts of Lord Privy Seal, Privy Council, Prime Minister and Cabinet Members are held only by persons who may be relied upon to further the purposes of your mission"

Paragraph 5g to which the above referred reads

"Throughout Japan, you will assure the dissolution

istic and secret patriotic societies and their agencies and affiliates"

The directive further states that

"The following will be arrested as rapidly as practicable and held as suspected war criminals, pending further instructions concerning their disposition

(1) All members of the Supreme Military Council, the Board of Field Marshals and Fleet Admirals, the Imperial General Headquarters, and the Army and Navy General Staffs,

"(2) All commissioned officers of the Gendarmerie (KEMPEI), and all officers of the Army and Navy who have been important exponents of militant nationalism and aggression,

"(3) All key members of ultranationalistic, terroristic, and secret patriotic societies, and

"(4) All persons who you have reason to believe are war criminals or whose names or descriptions are contained in lists of suspected war criminals which have been *or may be furnished to you*"

Finally the Supreme Commander was authorized to take retributive action against Japan's war and prewar leadership by the provisions that·

"All persons who have played an active and dominant governmental, economic, financial or other significant

and their agencies and affiliates or successor organizations will be interned pending further disposition You may intern other civilians as necessary for the achievement of your mission"[6]

The Government Section, as the Special Staff Section of General Headquarters responsible for advising the Supreme Commander on the reform and democratization of Japan's governmental system, assumed responsibility for preparing the SCAP plans and orders necessary to carry out the basic policy[7]

II. Implementation of the Purge

On December 5, 1945 a draft directive prepared in the Government Section was forwarded to various Staff Sections of General Headquarters for coordination

1 The Initial Directive Outlined

The covering memorandum accompanying the proposed directive called attention to the existing instructions for cleansing Japan's leadership of undesirable elements, noted that no comprehensive action had as yet been taken by General Headquarters to carry out such a program and added that "it is improbable that the Japanese will undertake any such housecleaning as that required under the above directives without direct orders from the Supreme Commander"

The memorandum pointed out that the time was propitious and the military situation suitable for implementation of the guiding directives and explained the nature of the removal

[6]Appendix A 13, J C of S Directive 1380/15, November 3, 1945

[7]Appendix G 8a(1), General Order No 8, SCAP, October 2, 1945

and exclusion order in some detail as follows:

"3. The initial demobilization and disarmament of Japan having been largely completed, the necessary political disarmament and the fulfillment of the above directives may now be undertaken. The coming Diet election makes prompt action even more important. The proposed directive to the Japanese Government not only carries out the first part of the demands of the controlling directives but will serve to exclude undesirable persons from the coming Diet in Japan, favor the liberal character of that institution, and will encourage liberal elements.

"4. To accomplish the objectives set forth in the guiding policy documents on Japan the program for political disarmament must be comprehensive and definite in its requirements. It should provide for the collection of records of the political background of Japanese officials and the recording of the action taken by the Japanese Government so that this Headquarters will have an adequate and simple check on compliances. Such procedures are provided in the order.

"5. The order proposed . . . requires the Japanese Government to institute a program of removal of officials of the national government (of Sonin rank and above) and to bar from reappointment and from election to the coming Diet, anyone who falls within the following categories of undesirables, as defined in the order itself

"a. *War Criminals.*
"b. *Career and Special Service Military Personnel, and Special Police Officials; Officials of War Ministries.*
"c. *Influential Members of Ultranationalistic, Terroristic or Secret Patriotic Societies.*
"d. *Persons Influential in Imperial Rule Assistance Association, Imperial Rule Assistance Political Society, etc*
"e. *Officers of Financial and Business Concerns Involved in Japanese Expansion.*
"f. *Governors of Occupied Territory.*
"g. *Other militarists and ultranationalists.*"

Having set up the removal and exclusion categories the memorandum explained that:

"The Sonin rank, referred to in paragraph 5 above, was selected, as that rank is the lowest of the three top grades of civil service in Japan. All officials of these grades would have policy-making responsibility in any position to which they might be appointed. The two highest ranks (Chokunin and Shinnin) are appointed by the Emperor and persons of these ranks may hold the positions of minister or privy counsellor, governor general, ambassador, prefectural governor, judge, etc. The Sonin rank usually fills such posts as secretary of a bureau or chief of a section. The appointment is subject to Imperial approval. The effect of the order therefore will be to remove only the highest group of responsible officials in any branch of government service who fall within the disqualifying categories mentioned above. It is estimated by the Japanese that a disqualification based on mere membership in the Imperial Rule Assistance Association (IRAA) would bar two-thirds of the present Diet members and some Japanese have urged as broad a disqualification as that. The disqualification in the proposed order is limited to higher officers and organizers and will therefore affect a far smaller proportion of the members of the Diet."

"To avoid a disruption of essential governmental functions due to the removal of technical personnel who fall within the above-prescribed categories," (the drafters of the directive pointed out) the order provided "an appeal procedure which will permit the reinstatement of essential officials who fall within the removal categories but who are found to be politically acceptable as individuals." They added that "the order also exempts from its operation the officials who are necessary for its execution and for any remaining steps for the demobilization of the Japanese armed forces."

The memorandum also noted that this original directive, as it stood, was not to be regarded as the final definitive implementation of the guiding policy papers:

"In order to comply fully with the directives mentioned above, it may be necessary to remove and disqualify one further group of Japanese officials from public office, either elective or appointive. This additional group may include other Japanese officials in Japanese ministries and in the prefectural governments who were in policy-making positions during the war years and in the years of preparation for the war. By reason of its effects upon the actual operation of government, it was deemed wise to postpone the removal of this category until the effect of the removal required under the order proposed as Tab 'A' has been absorbed. Recommendations for any further removals from office by category will be delayed until a thorough study has been made of the effects of the present order, which would not be completed for some months to come."

In conclusion the memorandum states:

"It should be noted that the United States policy directives also require the arrest and detention of certain individuals and the removal and exclusion of others from positions of responsibility or influence in important private enterprise. This policy requires programs of action of different types and in different fields from removal and exclusion from public office, and such programs are, therefore, not covered in the directive."

Thus those who formulated the initial purge plan and wrote the directive which with minor changes was to be issued as SCAPIN 550 recorded that, in their opinion, it was but the initial step in cleansing Japan's leadership of undesirable persons. They did not regard the document as complete even in the realm of politics, but visualized an extension of the provisions of the purge down to the local government level as soon as the effect of the removal order on the national government level had

been absorbed. They foresaw also the necessity of and pointed the way toward an extension of the purge technique to those members of the ruling hierarchy which the original directive did not directly affect: the great industrialists who had forged the weapons of aggression and had reaped the profitable harvest of conquest which those weapons made possible.

2 Philosophy of the Purge Program

The Joint Chiefs of Staff had directed the Supreme Commander to deal firmly with Japan's erstwhile military masters and with the entire membership of her ruling hierarchy They had envisaged and authorized the arrest of the top military policy makers, of all commissioned officers of the dreaded gendarmerie known as the *Kempei Tai*, and of all key members of ultranationalistic groups and terroristic secret societies. The Supreme Commander was authorized to intern all persons who had played an active part in formulating Japan's policy of aggression in any field of national endeavor and was given final responsibility for determining who was to be eliminated from positions of high responsibility. The yardstick which he was authorized to use placed no limitations upon his discretion·

> "... you will assume than any persons who have held key positions of high responsibility since 1937 in industry, finance, commerce or agriculture have been active exponents of militant nationalism and aggression "[4]

These policy directives were originally classified as "Top Secret" so that the Japanese leaders who soon began presenting themselves to various staff sections with suggestions as to how the Occupation should be run had no inkling of how thoroughly not only their political careers but their personal liberty had been forfeited to the discretion of the Supreme Commander by the terms of these directives The preparation of the purge plan was not, however, a closely guarded secret Japanese Government sources were required to submit much of the information upon which the directive was based As early as December 1, 1945, Yusuke Tsurumi, de facto leader of the Progressive Party (*Shimpo To*), appeared at the office of SCAP's chief counterintelligence officer to complain that "wild rumors" were creating "a great deal of confusion among the Diet members " Specifically, he said the rumor was that a directive ordering the expulsion and disqualification of over 200 of the present Diet members was under preparation and he urged General Headquarters to clarify the situation since "these rumors were seriously hampering the constructive efforts of the Diet and creating a very unwholesome atmosphere." Tsurumi's party, whose Diet membership was composed for the most part of representatives who had received the official support of the Tojo Cabinet in the elections of 1942, had itself considered the question of war responsibility and had arrived at the conclusion that individual party members should determine their own status by "new searching of the heart."

General MacArthur had said aboard the battleship *Missouri* that "As Supreme Commander for the Allied Powers, I announce it my firm purpose, in the tradition of the countries I represent, to proceed in the discharge of my responsibilities with justice and tolerance, while taking all necessary dispositions to insure that the terms of surrender are fully, promptly and faithfully complied with."[5] In the administration of the removal and exclusion program, as in the implementation of his other reforms, the Supreme Commander was to act in accordance with this statement of his intentions The indispensable [illegible] of the purge was to be tempered with mercy. General MacArthur saw in the program not a punitive measure [illegible] against those Japanese leaders who had brought Japan's disastrous [illegible] in world [illegible] Rather he visualized [illegible]

[4]Appendix A 13, J C of S Directive 1380/15, November 3, 1945

[5]Appendix F 1, Address to Surrender Delegates, September 2, 1945

the old reactionary hierarchy should be removed to make way for a new leadership untainted by responsibility for the war and the suppression of human liberties that characterized Japan's prewar government. As a SCAP press release stated in explanation of the directive, it was a device designed "to strike the shackles from the efforts of the Japanese people to rise toward freedom and democracy."[10]

The purge directive, SCAPIN 550,[11] was issued on January 4, 1946, in conjunction with a companion directive, SCAPIN 548,[12] which ordered the dissolution of the existing ultranationalistic and secret patriotic societies and forbade the formation of new ones. On that day General Whitney, Chief of the Government Section, described these directives as "blasting from their entrenched positions in the command posts of the government all those who planned, started and directed the war, and those who enslaved and beat the Japanese people into abject submission and who hoped to do the same with all the world." "Their activities, their ambitions, their methods have long been known to us," he said. "We have watched them closely. It has been hoped that Japan itself would clean its own stable."

Pointing out that "the Japanese people, once restrictions on free speech and free press had been removed, became vociferous in their demands for action on the part of their own government," General Whitney said:

"The inertia, if not the active opposition within the government itself, blocked all attempts. Centuries of feudal submission and the complete untrammelled and irresponsible freedom of the executive proved obstacles too great to be overcome by the people themselves. General MacArthur has, however, resolved the difficulty in direct and forthright fashion."

3. The Purge Directive Analyzed

As issued to the Japanese Government in January 1946, SCAPIN 550 provided for the removal from public office of persons who fell into the categories outlined above. It then clarified the terms used and indicated the methods by which the objective of removing and excluding undesirable elements was to be accomplished.

a. *Definition of Terms.* (1) *Public Office* was defined as "any position in the government service which is customarily filled by one with the civil service rank of chokunin or above" or any other position in the government service which is equivalent or superior to "the civil service rank of chokunin." In the case of government corporations the term was stated as including "at least: Chairman of the Board of Directors, President, Vice President, Director, Advisor and Auditor."

(2) *Government Service* was defined as including "all positions in the central Japanese and prefectural governments and all of their agencies and local branches, bureaus (including regional administrative bureaus), and offices and all positions in corporations, associations and other organizations in which said governments or any of their agencies have a financial interest representing actual or working control." Thus, while only those persons who occupied important public office would be removed from their positions under the directive, once removed, they were forbidden to occupy any position at all in the government. This safeguard against attempts on the part of purgees to insinuate themselves back into power by securing nominally unimportant jobs through which they could, nevertheless, exert unofficial influence would have been logical under any circumstances. In a Japan but recently emerged from feudalism and conditioned to the concept of intense loyalty upon which that feudalism was based, such a safeguard was an obvious necessity.

(3) *Removal and Exclusion.* Removal was defined as discharge from public office and the

[10]Appendix B: 5c, Press Release Concerning Purge Directives, January 4, 1946.

[11]Appendix B: 5b, Removal and Exclusion of Undesirable Personnel from Public Office, SCAPIN 550, January 4, 1946.

[12]Appendix B: 5a, Abolition of Certain Political Parties, Associations, Societies and Other Organizations, SCAPIN 548, January 4, 1946.

denial of any pensions or other emoluments which may have accrued as a result of an individual's occupancy of office. A person excluded from office could not hold any government position whatsoever and it was specifically pointed out that even "persons who may not be holding public offices from which they must be removed may, nevertheless, be disqualified from taking a position in the government service" Undesirable persons were to be excluded from government service until the provisions of the Potsdam Declaration had been fulfilled.

b. *Method of Administration* (1) *Preparation of Questionnaire.* Examination to determine whether or not he fell under the criteria outlined in the seven lettered categories was to be conducted on the basis of a questionnaire filled out by each incumbent of a public office A sample copy of the questionnaire to be used was included with the directive Blanks were provided for

(a) Title of position for which screened and necessary personal information such as name, address and physical description

(b) Chronological record of employment and military service.

(c) Membership in organizations. Here special mention was made of the "Rule Aid" societies, the IRAA, IRAPS, Dai Nippon Seiji Kai and their affiliates. Under this heading, the official submitting the questionnaire was required also to list any patriotic, military, political or social organizations in which he was or had been a member.

(d) Record of other service. Under this heading was to be listed any police service, and any work with protection and surveillance organizations or intelligence organs.

(e) Writing and speeches

(f) Corporate positions.

Space was also provided for any additional remarks required to clarify entries made under specific headings. Finally the individual was required to sign a statement at the end of his questionnaire certifying that all entries were correct and that the signer understood that "any omission or false or incomplete statements are criminal offences" which would subject him to prosecution or punishment In addition, the individual's superior was required to certify to his signature and to state that "the answers made on this questionnaire are true to the best of my knowledge and belief "

(2) *Screening of Questionnaires.* The Government was directed to instruct each of its ministries and other appropriate agencies to prepare and distribute to all Chokunin officials or persons of equivalent rank copies of this questionnaire. This, together with any other relevant information at the government's disposal, was to be used as a basis for determining the individual's status under SCAPIN 550. Each ministry was further directed to prepare a plan for distribution and collection for review and action on the questionnaires. Each plan was to provide for screening of officials in order of decreasing rank so that the highest officials would be screened first. To facilitate both the keeping of records by the Japanese Government and review by SCAP, duplicates of the questionnaires were to be kept at the headquarters of each ministry together with a master card on each individual containing a summary of all relevant information concerning his screening and the action taken as a result thereof

(3) *Exceptions to [illegible]* [illegible] were authorized [illegible] although, in general [illegible] ordered to be effected [illegible] possible " Specifically [illegible] absolutely required [illegible] tion of Japanese [illegible] administer [illegible] could be [illegible] information [illegible] mitted to [illegible] Government [illegible] SCAP [illegible] of an [illegible] the [illegible]

based only on the grounds that the individual in question was indispensable to the carrying out of essential governmental activities and that it was impossible to obtain a suitable replacement. No temporary reinstatement was to be permitted until SCAP had registered his approval in writing.

4. Immediate Political Effects

Even before its terms had been translated into Japanese law and before the screening of office-holders had begun, the directive markedly affected the highest levels of Japanese Government and politics.

a. *The Cabinet.* On the 5th of January the *Nippon Times* expressed the opinion that "only stout and artificial political scaffolding can keep Prime Minister Shidehara in office after this biggest bombshell since the surrender." The Shidehara Cabinet did not, however, fall as was generally anticipated. It was to stay in office until after the April elections, but during the succeeding months, as the Purge Directive was implemented and further interpreted, it was to undergo profound changes. Organized in early October upon the fall of the Higashi-Kuni Government, the Cabinet of Baron Kijuro Shidehara was commonly regarded as a stopgap which would carry through necessary measures for cooperation with the Occupation Forces. So thoroughly had Shidehara relied upon proponents and adherents of the old regime when forming his government that by the end of March it was apparent that only three ministers, Shigeru Yoshida, Hitoshi Ashida and Shidehara himself were clearly exempt from the purge. At first, however, the ramifications of the program were not thoroughly understood and only five Cabinet members tendered resignations. These were:

(1) Minister of Home Affairs—Zenjiro Horikiri, later purged as director of the Imperial Rule Assistance Youth Group, Category D.

(2) Minister of Transportation—Takeo Tanaka, later purged under Category F for the part he played in the Korean Government—General as Superintendent General of the Political Affairs Section.

(3) Minister of Agriculture and Forestry—Kenzo Matsumura, later purged under Category D as chairman of the Political Affairs Committee of the Imperial Rule Assistance Political Society.

(4) Minister of Education—Tamon Maeda, later purged under Category D for the part he played in the Imperial Rule Assistance Association as chief of a prefectural branch.

(5) Chief Cabinet Secretary—Daisaburo Tsugita, purged as a member of the Board of Directors of the Imperial Rule Assistance Association, Category D.

b. *Political Parties.* Even before a detailed interpretation of the directive was evolved, it was clear that the dominant Progressive Party, whose members held 257 seats in the Lower House during the "lame duck" session of the Diet, had sustained a mortal blow. Initial estimates of the number of members who would fall under the purge ran between 200 and the entire Diet membership of the party. Chief Party Secretary Tsurumi announced on January 12 that only three of the party's leaders were not affected. The prefectural organization of the party was not so badly shaken, however, since the initial application of the purge was conducted primarily on the national level. With its strong support in the agricultural areas, based almost exclusively on personal followings among the politically untutored, the Progressives hoped to replace their purged candidates in the election with others not similarly affected and thus to continue in control of the Diet.

The second largest party in the Diet was the Liberal Party (*Jiyu To*) with 45 members in the Lower House. Of these, preliminary estimates set the number of purgees at 12, while within the party structure 13 officials were affected including one vice-president, the chairman of the Political Affairs Investigating Committee

and three party secretaries Ichiro Hatoyama, Liberal Party chieftain, however, saw in the directive a relative advantage for his organization since the Liberals suffered far less from its provisions than did the Progressives Anticipating that Shidehara's shaky government would fall, Hatoyama immediately sought to assume "responsibility towards the nation to form a new cabinet in cooperation with the Social Democratic Party in order to alleviate the present social unrest caused by the inability of the Shidehara Government" and began dickering with the Social Democrats toward that end.

The Social Democratic Party (*Shakai To*), though it held but 17 Diet seats, was the third largest party in the Diet and of the three suffered actually and proportionately the least. It was at first estimated that only three of its Lower House members would be forced into political oblivion · Jotaro Kawakami, a recommended candidate in 1942; Mitsu Kono, who had played a leading role in the Imperial Rule Aid Societies, and Rikizo Hirano,* a founding member of the Imperial Way Society (*Kodo Kai*). Social Democratic Party leaders who were for the most part unaffected themselves took further encouragement from the results of the Directive upon rival groups and added 110 more candidates to the 168 already endorsed by the party for the coming election. Right-wing members began to consider the possibility of receiving cabinet portfolios should the Liberals be able to form a government.

5. Implementing Ordinances of the Japanese Government

a. *Preliminary Moves*. When the Cabinet crisis brought on by the January 4 directive had passed, the first action of the Japanese Government was to prepare an informal confidential memorandum to the Chief of the Government Section, SCAP, requesting further clarification of the terms of the directive on the ground that " . . it seems doubtful whether the directive purports to remove and exclude from such office and service all persons under the categories specified in Appendix A, no matter how innocent they may be of the sinister activities defined in paragraph 2." The memorandum further claimed if the removal and exclusion provisions of the directive "are to be applied to all persons under the categories of Appendix A . . it might conceivably affect approximately 200,000 persons in varying occupations, including ex-officers of the Army and Navy, civilian officials, members of the Diet, non-official politicians, industrialists and business men." Instead of removal by categories, the Japanese Government proposed to appoint an "Executive Commission of Inquiry to determine upon prima facie evidence whether [illegible] careers and activities of the persons in [illegible] deserve their removal and exclusion from [illegible] within the meaning of the directive [illegible] sible expedition in handling cases [illegible] ised · "As the examination of each [illegible] to an end, the Government will [illegible] the person charged of the findings [illegible] mittee and if they are satisfied [illegible] they will proceed forthwith [illegible] and exclusion from office as [illegible] not by that time spontaneous[illegible]

Such a proposal, designed [illegible] the removal and exclusion [illegible] administrative to a [illegible] have effectively nullified [illegible] rective and the [illegible] States policy in Japan [illegible] the responsibility [illegible] against each [illegible] quasi-judicial [illegible] have so delayed [illegible] its respon[illegible]

*Although Hirano s past career had identified him as an ultranationalist in the public [illegible] him clearly under the purge until January 1948, when additional information not [illegible] Central Screening Committee

would have taken place in the completion of Japan's political leadership for the duration of the Occupation. On January 25, 1946, General Courtney Whitney, Chief of the Government Section, clearly perceiving the ultimate result of the Japanese Government's plan for administration of the purge, held a conference with Prime Minister Shidehara in which he clarified the following points concerning the January 4 directive:

> "(1) The purpose of the directive is to cleanse the government of elements which by their *acts* or *associations* participated in Japanese expansion. The directive is not *punitive* (as the Japanese proposal implied) but, on the contrary, it is preventive. It is a necessary precaution against the resurgence of Japanese expansionist tendencies, therefore, until after the directive has been complied with, individual 'guilt' (which requires inquiry into *intent* as distinguished from *act*) is irrelevant.
>
> "(2) The directive must be complied with in letter as well as in spirit and, therefore, all persons included in the categories listed in Appendix A shall be removed from public office and shall thereafter be excluded from government service.
>
> "(3) If compliance with the directive results in inequitable treatment of a few individuals, this can be remedied after compliance is completed. There is no objection to the establishment of a Commission of Inquiry, proposed in the Japanese paper, for the purpose of holding hearings and making recommendations to the Japanese Government for exemption of certain individuals coming under the directive providing that the individual is first removed from public office in accordance with the directive and providing the action taken by the commission is submitted to SCAP for review prior to reinstatement in public office of any individual removed therefrom."

Though determined that the Japanese Government should not vitiate either intentionally or accidentally Occupation directives, General MacArthur consistently followed a policy of encouraging the Japanese Government to act on its own initiative and on its own responsibility in effecting democratic reforms. This policy guided the administration of the removal and exclusion directive as it guided other reform programs instituted or encouraged by SCAP. Thus, on January 21, 1946, all agencies in the Supreme Commander's Headquarters were notified that interpretations and opinions regarding SCAPIN 550 would not be given to any Japanese national or organization. All Japanese requesting such information were to be referred to the Japanese Government. The initial responsibility for making decisions had been placed upon the Japanese Government by the terms of the directive which had also provided for review of such decisions by SCAP. No other method of review or interpretation was to be permitted. Units of the Eighth Army, including its Military Government teams, were similarly notified.

b. *First Japanese Government Interpretation, February 9, 1946.* With the intention of SCAP thus clarified, the Japanese Government wasted no further time in implementing the directive, and on February 9, 1946, after preliminary consultations both with Government Section and the Office of the Chief of Counterintelligence, officially announced its interpretation of Category C (influential members of ultranationalistic, terroristic or secret patriotic societies), and Category D (persons *influential in the activities* of IRAA, IRAPS, and the Political Association of Great Japan). The announcement explained that the interpretation of these two paragraphs was being published before detailed interpretation of the remaining five categories had been completed because

> "an early announcement in this regard was considered necessary in view of the fact that preliminary investigations of would-be candidates in the coming election for the House of Representatives must be conducted, and also because there are in circulation various conjectural or erroneous views concerning the scope of the objectionable categories."

(1) *Category D Organizations Listed.* This statement was followed by a detailed listing of the positions in various "Rule-Aid" organizations, occupancy of which was deemed to bring an individual under the provisions of the memorandum.

(a) *The Imperial Rule Assistance Association.* The first of these was the Imperial Rule Assistance Association (*Taisei Yokusan Kai*) itself, the totalitarian national front organization created by Prince Konoye in 1940 and utilized by the militarists to strengthen their control over the people and to insure universal support

of the war effort. Eighteen positions in the IRAA were listed from president down to chief of a section of a prefectural branch

(b) *Affiliates of the IRAA.* The first affiliate of the IRAA to be covered by the announcement was the Imperial Rule Assistance Manhood Group (*Yokusan Sonen Dan*), the violently nationalistic youth auxiliary whose unsavory history began in 1929 when its predecessor was first organized to suppress labor and agrarian disputes This organization which finally passed under the domination of war criminal suspect Kingoro Hashimoto, instigator of the Panay bombing, provided the IRAA with local personnel to carry out its policies Purgeable positions began with the national commandant and extended down to the chief of a section on the prefectural level The other major affiliate was the Great Japan Asia Development League (*Dai Nippon Koa Domei*), a sort of holding company for 62 participating societies including such diverse elements as the notorious Black Dragon Society (*Kokuryu Kai*), the East Asia Study Institute (*Toa Koakenkyujo*) and the Mutual Benevolence Society (*Dojin Kai*) Though diverse, they shared a mutual interest in Japan's conquest of Asia The president of the League and all intervening officials down to the chief of a prefectural branch were listed as purgeable Eight lesser affiliates were also listed and any person who held the position of representative or highest executive in the national headquarters of each was deemed subject to the purge These affiliates were.

i The Great Japan Patriotic Industrial Society (*Dai Nippon Sangyo Hokokukai*)

ii Patriotic Farm League (*Nogyo Hokoku Renmei*)

iii Patriotic Commercial Society (*Shogyo Hokokukai*)

iv Japan Patriotic Maritime Association (*Nippon Kaiun Hokoku Dan*)

v Great Japan Young Men's Association (*Dai Nippon Seishonen Dan*)

vi Great Japan Women's Society (*Dai Nippon Fujin Kai*)

vii Great Japan Patriotic Labor Society (*Dai Nippon Romu Hokoku Kai*).

viii. National Mechanized Defense Corps (*Kokubo Kikaika Kyokai*)

(c) *The Imperial Rule Assistance Political Society* This more than any other organization was responsible for the political regimentation of the war years Organized by the politicians who had rigged the 1942 elections in behalf of the Tojo Government, this Society became a permanent "political party to assist in the accomplishment of the Great East Asia War" Since the Tojo government had "recommended" 466 candidates in the election, one for every seat in the Lower House, and since it had successfully elected 382 of them as against 84 successful "nonrecommended" candidates, this organization remained in complete control of the Diet until the end of the Tojo regime when internal dissension, aggravated by Japan's war failures, caused its gradual eclipse Responsible officials held purgeable by the Government's interpretation began with the members of the organizing committee and extended through the president down to auditors and section chiefs in the party secretariat

(d) *Political Association of Great Japan* This organization was the successor to the Imperial Rule Political Society, but did not attempt to include even nominally the "unrecommended" Diet members and small opposition groups which had split off from the body of the society when the deteriorating strategic situation had weakened the once iron control of the Tojo Government From the president down to the chief of a section, officials of this association were held purgeable

(2) *Leaders of Terroristic Societies Purged* The February 9th announcement also defined in detail who should fall under the provisions of Category C, SCAPIN 550, which rendered purgeable "influential members of ultranationalistic, terroristic or secret patriotic societies" SCAPIN 548, the memorandum to the Japanese Government issued on the same day as SCAPIN 550, had directed that certain political

parties, associations and societies of known ultranationalistic nature be abolished and that the Japanese Government take steps to prevent the formation of organizations having similar aims in the future. The original directive had specifically listed only 27 such societies as examples of the sort of organizations to be abolished. One of these, the Dark Ocean Society (*Genyo Sha*), was the first of a long line of ultranationalistic organizations. Founded in 1881, its purpose was to encourage Japan's nascent imperialism which had received a temporary setback after Saigo Takemori's scheme for seizing Korea, the land across the "Dark Ocean," had been thwarted by the wiser counsels of the Meiji statesmen. Another was the Black Dragon or Amur River Society (*Kokuryu Kai*), infamous prototype of all succeeding terroristic groups, which was founded in 1901 with the avowed aim of extending Japanese hegemony to Manchuria and establishing the Amur River as the northern boundary of the Japanese empire. Later organizations of a different type, such as the Fascist Masses Party (*Kokusui Taishu To*) of Ryoichi Sasegawa, supposedly patterned on the Italian model, and the Great Japan Production Party (*Dai Nippon Seisan To*) of Ryohei Uchida, were also included. In its initial implementation of SCAPIN 548, the Japanese Government brought the number of dissolved organizations to a total of 119. By the terms of the purge directive and the interpretation of February 9, any person who had been at any time a founder, officer or director of any of these societies, or who had occupied a post of authority in one, or who had edited a publication of a prescribed society or made a substantial contribution to one, was to be removed and excluded.

c. *Promulgation of Implementing Ordinances, February 27, 1946.* The ordinances which established the legal basis for the purge completed the government's interpretation of the remaining purge categories with the exception of Category G and were promulgated on February 27 in the form of an Imperial ordinance and an accompanying Cabinet and Home Ministry ordinance. The provisions of these two early implementing ordinances were later included and expanded in Imperial Ordinances Nos. 1, 2, and 3 of 1947 and in Cabinet and Home Ministry Ordinance No. 1.[13] The Imperial ordinance was largely a reiteration of SCAPIN 550. Its eight short articles stated that certain persons falling under the Supreme Commander's directive were to be removed from their posts and barred from government service in the future; defined the terms "position in the government service" and the offices from which they would be barred; decreed that each ministry, board or bureau should conduct screening "in accordance with the stipulation made by the Prime Minister" and concluded with a penalty clause providing that any person who falsified or omitted relevant information from his questionnaire should be liable to penal serviture or imprisonment for "less than 1 year or to a fine of less than 3,000 yen." The implementing Cabinet and Home Ministry ordinance, promulgated on the same day, was, together with its two appendices, a detailed document. It stipulated who was required to submit a questionnaire for screening and how the questionnaire should be prepared and forwarded to the Prime Minister. Appendix No. 1 gave the final interpretation of Categories A, B and F; E and G remained as originally written in SCAPIN 550, but it was understood that a more detailed definition of these two categories would be announced in the near future.

Category A—War criminals were defined exactly as in SCAPIN 550: "Persons arrested as suspected war criminals unless released or acquitted."

Category B—Career military personnel were defined as persons who had been members of the Board of Fleet Admirals and Field Marshals, the Supreme Military Council, the Imperial General Headquarters and other top army and navy policy groups. Career army and navy

[13]Appendix B: 5i; j; and k.

officers and Special Volunteer Reserve Officers were defined as those who had entered the service under the provisions of certain enumerated ordinances. Under this category, the provisions of SCAPIN 550 regarding members of Japan's famous intelligence organizations and of the military police (*Kempei Tai*) were repeated verbatim as were those applying to officials of the war and navy ministries

Categories C and D.—The ordinance incorporated the interpretations of February 9 which have been explained above.

Category F.—The provisions of the ordinance relating to "Governors of Occupied Territories" closely paralleled the wording of the original directive, with certain clarifications and minor additions. In those areas of Asia first subjugated by the Japanese, including Korea, Formosa and Manchuria, the governors and the chief administrators since 1937 were declared subject to the purge In the Kwantung Peninsula, that strategic territory which gave its name to Japan's semiautonomous elite "Kwantung Army," anyone who had held the principal administrative post or who had been ambassador to Manchuria since 1931 was subject to purge. In the islands of the South Seas, the Netherlands East Indies, Malaya and other regions overrun by the Japanese during the Pacific War, the top military administrators were listed. In the countries which were occupied by Japanese troops but allowed to maintain the fiction of nominal self-government, the ranking Japanese "advisors" or "ambassadors" were brought under the purge. This included the political adviser to the Federal Autonomous Government of Mongolia, the Ambassador to the Philippines, the Chief of the Hikari Agency in Thailand, the Supreme Advisor to the Burmese Government, the chief adviser, chief departmental advisers, and the Ambassador to the Government of the Chinese puppet, Wang Ching Wei Thus by February 27 only two categories of the seven listed in the directive remained to be defined and incorporated in Japanese law. A cabinet announcement explaining who should fall under E and G was soon forthcoming.

d. *Interpretation of Categories E and G, March 10, 1946.* On March 10, 1946, the Cabinet announced its interpretation of the remaining two categories, E and G.

(1) *Officers and Organizations Under E Listed.* "Officers of financial and development organizations involved in Japanese expansion" between July 7, 1937, and September 2, 1945, were defined as persons who had occupied policy-making positions from the president down through auditors to branch managers in certain listed firms. SCAPIN 550 had listed 20 proscribed organizations, including the banks of Chosen (Korea), Manchukuo (Manchuria), and Taiwan (Formosa), the Korean, Manchurian, North China, and Central China development companies and the South Manchurian Railway Co., famous prototype of all Japanese overseas commercial ventures. The Japanese Government interpretation listed 13 more [illegible] enterprises making 33 in all including the [illegible] of Mongolia and Thailand, the Manch[illegible] Investment Securities Co and the world[illegible] Yokohama Specie Bank, none of wh[illegible] been proscribed by the original direct[illegible] interpretation concluded, as did the [illegible] with a provision for bringing under [illegible] officials of any other company [illegible] ganized for the purpose of exploi[illegible] territory

(2) *First Interpretation of* [illegible] March 10 Cabinet announce[illegible] nese Government's first [illegible] broad final category of [illegible] tional Militarists and U[illegible] provisions of this Cabin[illegible] later expanded in more [illegible] inet and Home Affairs [illegible] 1 of 1947.[14] It was [illegible] May; and in the follo[illegible] phases of the remo[illegible] the purge of und[illegible]

[14]Appendix B 5k.

of public information and from the economic rule of the nation, were to be based upon its provisions. The definition of additional militarists and ultranationalists in the original directive reads as follows:

> "1. Any person who has denounced or contributed to the seizure of opponents of the militaristic regime.
>
> "2. Any person who has instigated or perpetrated an act of violence against opponents of the militaristic regime.
>
> "3. Any person who has played an active and predominant governmental part in the Japanese program of aggression or who by speech, writing or action has shown himself to be an active exponent of militant nationalism and aggression."

(a) The Japanese Government's Interpretation of March 10, 1946, expanded this into eight paragraphs each of which was actually a specific sub-category. The first paragraph brought under the provisions of the directive those persons who during the period of Japan's most ruthless expansionism, 1937 to 1945, had held the top policy-forming positions in the government. This included all Cabinet ministers and other high officers among whom were the presidents of the Privy Council, the Planning Board and the Board of Information.

(b) The second paragraph listed other important positions both in the government and in financial control organizations. Persons who held these positions between 1937 and 1945 were not held to be automatically purgeable as were those who held the positions listed in the first paragraph. They were to be removed and excluded only if, in addition to holding listed positions, there was "conspicuous evidence that they fell under the provisions of Category G." The listed government offices included Cabinet councillor and adviser, the vice president of the Privy Council Planning Board and the Board of Information, the vice president of the Board of Manchurian Affairs and the Asia Development Board, vice minister of any ministry and the Ambassadors to Germany and Italy. The positions in financial and economic control entities included president and vice president of the Bank of Japan, anyone who represented or managed a branch of a Japanese financial institution in territory occupied by Japanese armed forces, advisor to a foreign government, including its local organs in territories occupied by the Japanese armed forces. The term "conspicuous evidence" was defined in a note at the conclusion of the interpretation as meaning:

> "(1) Facts that a person played an important part in the conclusion of Japanese-Manchurian Protocol, Tripartite Alliance, Sino-Japanese Basic Treaty, Japanese Thai Alliance Pact, or in the stationing of Japanese troops in French Indo-China or in starting the Great East Asia War.
>
> "(2) Facts that a person in question played an important role in the suppression of opponents of militarism.
>
> "(3) Facts that a person in question played an important role in concluding economic agreements with, or in extending credits to countries in the sphere occupied by the Japanese armed forces
>
> "(4) Facts that a person in question played an important part in the financial or production program for Japanese military activities."

(c) Paragraphs 3 and 4 were designed to remove from the public life of the nation those persons who had directed and implemented that methodical suppression of civil liberties at home which had supported and complimented Japan's aggression abroad. Paragraph 3 brought under the memorandum any official who held a position in any one of three related fields of activity and who had participated in any important case involving the suppression of civil liberties and individual rights. The three classes of officials affected were:

1. The "thought procurators," men employed by the Justice Ministry in much the same manner as other procurators, or prosecutors, but whose assignment was specifically limited to preparing cases against those persons who dared to criticize the existing regime.

2. Protection and surveillance officials, whose duty it was to extend to released "thought offenders" the "paternal protection" of the police and legal system, to see that they did not associate with persons who might have "wrong" thoughts, and to dictate to that end their places of residence, their professions and their friends.

3. Preventive detention and penal adminis-

tration officials who were empowered to, and often did, continue to keep thought offenders in confinement even after their alloted terms had been served if in the official's opinion there was danger that the offender would revert to his old habit of thinking "dangerous thoughts,"

(d) Similarly, paragraph 4 of the interpretation was directed against the notorious "special higher police," the civil secret police force whose primary tasks were to hunt down persons with "dangerous thoughts" and to enforce the oppressive peace preservation laws Any special higher policemen who had participated in an important thought case was to be removed and excluded under this paragraph Further interpretation of these paragraphs as announced by the Cabinet on April 16, 1946, also brought under the purge any individual who had committed any cruel or oppressive act during his tenure of office with the judiciary and any person who spent so long a time in any one of these three specialized fields as to render it apparent that he had devoted his career to suppression of civil liberties by choice and preference The figure chosen was a total of 8 years in all or 4 years since March 1941

(e) Paragraph 5 of the March 10 interpretation was briefly stated, but two of its five subparagraphs were to be further interpreted until they evolved into a distinct and important phase of the entire program, the public information media purge These were the two subparagraphs which brought under the terms of the directive any "man of letters or artist" and any "owner of publishing enterprise, publisher or editor of any newspapers, magazine or other publication" whose activities had been militaristic or ultranationalistic as defined by SCAPIN 550 Other persons who were to be removed and excluded under the memorandum included government officials, other than those previously listed, members of the House of Representatives and the House of Peers, and business men then holding public office who had participated in activities proscribed under Category G

(f) Policy-forming executives from the president down to and including standing directors of any munitions companies, including iron and steel plants, were subject to the memorandum according to subparagraph 6 of the interpretation Paragraph 7 listed the highest executive or representative of any ultranationalistic, terroristic or secret patriotic society not already proscribed under paragraph 6, while the concluding paragraph made binding the government's previous suggestion that those who had the support of the Tojo government in the elections of 1942 "refrain from running as candidates for office" by stating that any person who was "recommended" in the general election for 1942 was subject to the directive

The Cabinet announcement of March 10, 1946, had the force of law It marked the establishment of complete criteria upon which to base review of questionnaires submitted by candidates and government officials of chokunin rank. The following day the Government announced its intention to establish a screening committee to process and review questionnaires, to investigate any uncertain facts in an individual's career and to make the decision as to eligibility, subject only to the Prime Minister's review and the approval of SCAP The actual operation of the purge was about to begin and the Government, in order to gain the necessary time to administer the program, postponed the general elections until April 10, 1946.

6. SCAP—Japanese Government Relationship Clarified

a *Policy Established on Temporary Retentions* When it became apparent that certain ministers of the Shidehara Cabinet must inevitably fall under the newly announced criteria, the Government requested General MacArthur to grant temporary exemption from the purge to Minister of Finance Keizo Shibusawa, Justice Minister Chuzo Iwata, Commerce and Industry Minister Sankuro Ogasawara, and Minister Without Portfolio Joji Matsumoto The request

was based upon the grounds that the services of the ministers in question were "indispensable for the time being" and that the making of new ministerial appointments so near to election time would be unwise. In accordance with the provisions for postponement provided for by the original directive, the Supreme Commander permitted their retention in office until after the elections.

b. *Policy Established on Special Exemptions.* On March 5, 1946, the Japanese Government requested that six individuals who appeared to fall under the memorandum be granted exemption from the purge. These included a former regular army officer, purgeable under Category B, a parliamentary councillor for the Munitions Ministry, purgeable under Category G, a parliamentary councillor for the War Ministry, purgeable under B, a parliamentary vice minister of the Navy, also purgeable under B, a Director of the Political Association of Great Japan, and a Director of the Imperial Rule Assistance Political Society, both purgeable under Category D. This request was submitted to the Office of the Chief Counter-Intelligence Officer which was at that time assigned the duty of reviewing individual cases, subject to the concurrence of Government Section. OCCIO recommended that the request be rejected in each case on the grounds that, during the initial implementation of the program, fundamental policy precluded any variation from the literal terms of the directive. The Government Section concurred in this decision and forwarded it to the Chief of Staff with the added statement that

"The Japanese Government has made a sweeping application of the directive of January 4 in full compliance with its spirit and letter. These candidates fall squarely within the categories established by our aforesaid Directive of January 4, 1946 and the implementing regulations of the Japanese Government. To make such exceptions would tend to weaken the position taken by this headquarters that it is the responsibility of the Japanese Government to carry out the directive and to administer its provisions. It is understood that this view follows the policy of the Supreme Commander heretofore enunciated."

c. *Policy Established on New Appointees.* During the month of March, the Japanese Government was reminded that the memorandum provided not only for removing undesirable persons from public office but for barring them from government service. In clarifying this requirement of the directive, the relationship between the reviewing agencies in SCAP and the Japanese Government was also clarified, and the need for constant supervision by SCAP authorities over the screening activities of the Government was established.

(1) *The Kano Case.* On March 11, 1948, the Government announced the appointment of Hisakira Kano as chief secretary of the newly created reparations council. The appointment, made without previous screening by the Japanese Government or review by SCAP, was in contravention of the Government's own interpretation of the directive, for Kano as over-all manager of all branches of the Yokohama Specie Bank in China from 1942 to 1945 clearly fell under the purge. Specifically, he was barred by the provisions of Category E as defined by the Government's announcement of March 10 which was published by the press on the same day as the news of Kano's appointment. The Office of the Chief Counter-Intelligence Officer immediately reported to Government Section this failure of the Government to abide by the terms of paragraph 6, SCAPIN 550, which states in part that "persons who may not be holding public offices from which they must be removed, may nevertheless be disqualified from taking a position in the government service." The Government was accordingly informed that Kano's appointment was not acceptable to SCAP and the order was revoked.

(2) *Appointments to the House of Peers.* Since Japan's surrender the membership of the Diet's Upper House had slowly dwindled. Fourteen peers had resigned for various reasons, 22 had been named as war criminal suspects and 39 had retired when it became obvious that they fell under the Purge directive. In a move to fill

these vacancies, the Government on March 13, 1946, appointed 6 new members to the House of Peers and 9 days later announced 24 more new appointments to that body. In no case, as investigation by SCAP revealed, did the Japanese Government secure the prescribed questionnaire from a new appointee, nor did the Government officially determine whether or not these appointees were barred from public office by the terms of the January 4 directive or its implementing ordinances. Accordingly, on March 27, 1946, the Supreme Commander dispatched a memorandum to the Imperial Japanese Government stating that, since the appointment of the 30 new members to the House of Peers had been made without regard for the screening procedure prescribed by SCAPIN 550, the appointees " will exercise no prerogatives pending compliance by the Japanese Government with the above procedure" The memorandum further stated that ". . the Japanese Government will secure from each individual the required questionnaire, will determine whether each individual is barred from government service and will submit their action for final review by the Supreme Commander "

7 Political Consequences

Succeeding interpretations and the promulgation of Japanese Government ordinances implementing the directive had a profound and cumulative effect on the course of postwar politics in Japan The 2-month interval between the first Cabinet announcement of February 9 interpreting Categories C and D and the general elections on April 10, 1946 was marked by great confusion in the councils of Japan's political parties and by almost daily shifts of alliances as one wartime political leader after another fell under successive interpretations of the purge and his followers and partisans sought new standards under which to serve.

a. *Effect on the Cabinet.* The Government of Baron Shidehara, which had sustained a heavy blow in January, faced the loss of five more of its members after the interpretation of Category G on March 10 In view of the approaching elections and the probability that a new government would be formed shortly thereafter, temporary extension was granted to four ministers A fifth, Ichizo Kobayashi, Minister Without Portfolio and Director of the Reconstruction Board, who had served as an adviser to the national Imperial Rule Assistance Association and as Minister of Commerce and Industry in the Second Konoye Cabinet, resigned on March 9 when the extent of Category G's provisions became known

b *Effect on the Diet* Between the 4th of January and election time, 39 members of the House of Peers had resigned rather than be removed from office under the terms of the directive. It was estimated that, when all members had been screened on the basis of their questionnaires, more than one hundred undesirable persons would be removed It was, however, in the Lower House and among the political parties represented in it that the effect was most profound and significant.

(1) *Progressive Party* The Progressive Party had weathered the initial storm caused by the issuance of the directive when the clarification of February 9 rendered all but 27 of the party's 274 Diet members ineligible for government office. The *Asahi* newspaper in discussing the effects of the Cabinet Announcement stated that "the application [of the purge categories] is so wide that they are unable to find successors to the president, managers and other members " On February 15 the Cabinet published the official "opinion" that party position should be regarded as public office, thus dealing a third and almost fatal blow to the dwindling and decimated Progressives. For this new announcement deprived the party of the political influence and counsel of leaders who had fallen under the purge during the preceding week. On February 18 Chuji Machida, Yusuke Tsurumi and all members of the General Affairs Committee, chief secretaries and staff

members submitted their resignations and authorized Takao Saito, who alone remained unaffected by the announcement, to assume the task of party reorganization.

(2) *Liberal Party*. The issuance of the purge directive in January rendered certain Liberal Party leaders ineligible for office but this adverse effect was more than counteracted by the relative gains made at the expense of the discredited Progressives. The Cabinet announcement of February 9, however, eliminated 20 of the party's 50 Diet members and further inroads were made in the party's central staff. The Liberals stubbornly contended as late as February 12 that members ineligible for public office might still retain their party positions. Three days later the Cabinet announcement stating that party positions should be regarded as public office eliminated from the Liberals' councils several influential purgees, but the real significance of that announcement to the fortunes of the Liberal Party was not immediately felt nor would it be until after the election when Ichiro Hatoyama himself was found to fall under the purge. Meanwhile, the Liberals continued to profit from the plight of the Progressives. On February 22 Hatoyama, pushing his advantage, called for a general anticommunist front of all conservative elements and though this move was generally condemned by the press, it proved an effective tactic. Preelection forecasts being favorable, Hatoyama contemplated the formation of a cabinet dominated by the Liberal Party in which he said other parties would be encouraged to participate. His optimistic expectations were largely justified by the results of the April elections from which the Liberal Party emerged with a marked plurality in the Diet and, despite attempts of the Shidehara Government to remain in power by a series of political maneuvers, it finally appeared that Hatoyama would be called upon to form the first postelection government. In fact, on May 4, 1946, the outgoing Foreign Minister, Shigeru Yoshida, addressed a letter to General MacArthur stating that under the circumstances "Baron Shidehara feels himself called upon to recommend to the Throne that Mr. Hatoyama be empowered to form a new cabinet," and adding that "Baron Shidehara desires to be informed in advance whether such a recommendation will meet with your approval." Mr. Yoshida was immediately informed by General Whitney that prior to the receipt of his letter, the Supreme Commander "had already issued a directive covering the subject to the Imperial Japanese Government." This directive in question, SCAPIN 919, ordered the removal and exclusion of Ichiro Hatoyama under the provisions of Category G.[15] Specifically, it pointed out that:

(a) As Chief Secretary in the Cabinet of General Giichi Tanaka, he shared responsibility for the amendments to the notorious Peace Preservation Law which were forced through by emergency Imperial ordinance without Diet approval, and which became the government's principal weapon in suppressing freedom of speech and assembly.

(b) As Minister of Education from 1931 to 1934, "he was responsible for stifling freedom of speech in the schools by means of mass dismissals and arrests of teachers."

(c) He also participated in the forced dissolution of farmer-labor bodies and lauded Hitler's regimentation of labor.

(d) As personal envoy of Prince Konoye he acted as an international apologist for Japanese aggression and later accused China of provoking the "Incidents" at the instigation of the Western Powers.

After the purge of Hatoyama, the task of forming a cabinet eventually fell to Shigeru Yoshida, Foreign Minister in the Shidehara Cabinet, whose government, made up principally of Liberal and Progressive Party members, was installed on May 22, 1946.

(3) *Social Democratic Party*. The Social Democratic Party did not expect to be greatly af-

[15]Appendix B: 5f, Removal and Exclusion from Public Office of Diet Member, SCAPIN 919, May 3, 1946.

fected by the directive as issued in January but subsequent interpretations made drastic changes in the party's leadership, particularly among the dominant right-wing members. Of the 17 Socialists in the Special Session of the Diet, 10 were disqualified before election time, including such founders of the party as Jotaro Kawakami, Seion Kawamata, and Shoichi Miyake Such losses of established leaders reduced the party's immediate chances at the polls, but had the incidental effect of consolidating the left wing with the remainder of the party Another result was the strengthening of Tetsu Katayama's leadership of the Social Democrats

Thus, the Social Democratic Party gained more than it lost through the implementation of the purge program and increased its membership in the Diet to 92 in the elections of April 10 Although for a time immediately after the designation of Hatoyama, the Socialists attempted to form a cabinet, this attempt was unsuccessful and their role during the succeeding year was to be that of principal opposition party

(4) *Screening Summary.* Under paragraph 14 of SCAPIN 550, the qualifications of all candidates for the House of Representatives were examined by the Japanese Government prior to the April 10 elections Of the 3,384 candidates who filed, 252 were disqualified The number of persons ineligible because they had been recommended candidates in the 1942 elections was 381 Of these, 113 filed their names as candidates and were among the 252 disqualified, the remaining 268 did not file

8. Postelection Developments

The process of screening public office holders continued throughout the spring and summer of 1946 During the period of political maneuvering and confusion between the election and the formation of the Yoshida Cabinet, through the convening of the new Diet on June 20 and while interpellations on the new Constitution were in progress, the work continued In the course of screening, Category G was further interpreted in order to facilitate the screening process by providing a practical working definition of certain terms Postelection developments were as follows.

a *The May 16 Interpretation of Category G.* On May 16, 1946, SCAP approved the Japanese Government's more detailed interpretation of subparagraphs 5 and 6 of Category G [16]

(1) *Paragraph Five* Paragraph 5, as defined on March 10, had merely brought under the purge any government official, member of parliament, man of letters, publisher or business man who had participated in activities proscribed under Category G The screening process had revealed a need for further definition of what was meant by these activities in each instance The definition was basically similar for each professional group, although necessarily it differed in detail according to the nature of the profession For example, any Government official was to be removed who had taken part in the planning or execution of important governmental policies regarding

(a) The dissemination of propaganda designed to instigate war or advocate dictatorship,

(b) Control of thought or speech for the same purpose,

(c) Political direction of economic exploitation of conquered territories,

(d) Wartime general mobilization or economic control,

(e) Other plans for the direction of war

Furthermore, any official was to be removed who had engaged in instigating war or advocating dictatorship by speech, writing or action, regardless of whether or not it was his official obligation to do so Similarly, any member of the House of Peers or the House of Representatives who had instigated war or advocated dictatorship by any means was to be subject to the purge The third professional

[16] This second interpretation of Category G was also incorporated in Cabinet and Home Ministry Ordinance No 1 of 1946, see Appendix B 5k.

category, and one that was to prove of great importance, brought under the purge "writers, reviewers and journalists" who had advocated aggression or militant nationalism, or laid down an ideological basis for the Greater East Asia Coprosperity sphere, the China Incident or the Pacific War. Men of letters who had advocated the creation of a totalitarian structure in Japan, denounced opponents of the militaristic regime or in any way championed ultranationalism were by this interpretation purged. The same criteria were to be used in determining whether publishers and editors, the fourth professional group, were to be removed and excluded under Category G, except that they were to be held responsible for the publishing and dissemination rather than for the actual writing of proscribed books and articles. The fifth and last group, "businessmen," was defined to include persons who had occupied policy-making positions in enterprises which had produced more than 10 percent of the nation's total production of certain specified armaments, and the representatives of any enterprises authorized by the Army or Navy to engage in activities in occupied areas. Screening under G Category criteria removed 139 persons from corporations, associations and other organizations in which the Government had a special interest. An additional 78 persons were purged because they held positions in financial and development organizations involved in Japanese expansion.

(2) *Paragraph Six.* By the interpretation of paragraph 6, 10 percent of the nation's total production was set as the criteria for determining whether an enterprise should be included among those described in paragraph 6 of Category G as "influential companies manufacturing finished aircraft, arms, iron or steel."

b. *Rescreening of Newly Elected Diet Members.* With the newly elected Diet scheduled to convene on June 20, 1946, the Japanese Government sought to complete rescreening of all Diet members in order to prevent any undesirable persons from holding seats in the new legislature. As was anticipated, this second and less hurried review brought to light a number of potential purgees who had been overlooked in the preliminary screening of over 3,000 candidates prior to the April elections. Eight representatives, most of them highly influential politicians, were found ineligible, and all resigned their seats except Sanehiko Yamamoto, chairman of the Executive Committee of the Cooperative Democratic Party, who asked that his case be reexamined. Among the eight were Bukichi Miki, Liberal Party member, originally scheduled to be Speaker of the House; Ichiro Kono, Secretary General of the Liberal Party; Mitsugi Tanaka and Yuji Satsuma, both ranking officers in the Progressive Party. In July, two more Diet members were removed from office. They were Mitsu Kono, Social Democratic Party leader in the Lower House and Tada Yamakawa, member of the Constitutional Research Committee in the House of Peers.

c. *Screening of Other Public Office Holders.* With the rescreening of successful candidates completed, the government turned again to the task of screening other holders of public office. A new committee was established to carry on the work of screening applicants for government posts. Tatsukichi Minobe, member of the Privy Council and noted constitutional scholar, was appointed chairman of the committee which also included Takeo Irumano, former President of the Teikoku Bank; Taro Terasaki, Vice Minister of Foreign Affairs; Issei Iinuma, Vice Minister of Home Affairs and Tadachiro Tanimura, Vice Minister of Justice. The committee conducted its first business meeting on July 1, 1946. By the end of that month, the holders of public office in Japan, from members of the Privy Council down through chokunin rank officials in the various ministries and governors of prefectures to the presiding judges of the courts of appeal and the district courts, had been screened. Also screened under the directive were officers and directors of the Bank of Japan and other special banks, control associations

and control companies, presidents, deans and principals of universities, colleges and other schools under the direct control of the Ministry of Education. The Screening Committee continued its work though at a slackened pace after this time.

9 Summary of First Year's Achievements

By January 4, 1947, the Government had screened 8,899 persons under the provisions of the directive It had passed 7,832 of these and barred or removed 1,067 Of this last number, 807 were removed and 260 were barred from Government service

a *Number Purged Under Each Category.* The total for persons barred or removed may be broken down according to the specific category of the directive under which the action was taken.

Category	Number barred or removed
A—War criminals	44
B—Career military and naval officers	300
C—Leaders of secret societies	3
D—Leaders in rule-aid organizations	140
E—Officers of overseas companies	78
F—Governors of occupied territories	14
G—Other militarists and ultranationalists	458
Persons falling under two or more categories	30
Total	1,067

b *Break-down According to Screening Schedule.* The screening of public office holders was conducted in order of decreasing importance. Thus members of the Privy Council were screened first, then members of the Diet, next officials of the various ministries, officers of control companies and government corporations and finally electors of the "highest taxpaying members of the House of Peers " The number of individuals screened, passed and removed in each of these categories was as follows.

Screening group	Number screened	Number passed	Number removed
Privy Council	28	19	9
House of Peers	529	356	173
House of Representatives	476	467	9
Imperial Household	128	10	118
Cabinet	144	138	6
Foreign Affairs	153	107	46
Home Affairs	564	224	340
Finance	223	218	5
Justice	252	215	37
Education	1,805	1,727	78
Welfare	120	97	23
Agriculture and Forestry	120	105	15
Commerce and Industry	69	59	10
Transportation.	170	152	18
Communication	13	13	0
Other Organizations	2,396	2,255	141
Electors of "Highest Taxpaying Members" of House of Peers	1,730	1,691	39
Total	8,920	7,853	1,067

III. Extension of the Purge Program

As has been previously pointed out, neither SCAP nor the Japanese Government officials who drafted the original removal and exclusion order regarded it as a final definitive implementation of the basic postsurrender policy regarding Japan The covering memorandum which accompanied the draft of SCAPIN 550 clearly stated that in order fully to comply with the existing policy directives, it would be necessary to extend the purge to prefectural levels but that "by reason of its effects upon the actual operation of government, it was deemed wise to postpone the removal of this category until the effect of the removal required under the presently proposed order has been absorbed." The covering memorandum also specifically noted that existing policy directives required the removal and exclusion of certain persons from positions of responsibility in private enterprise. By the end of July

1946 it was apparent that the government had absorbed the effects of SCAPIN 550 with considerably less difficulty than Japanese sources had anticipated, and that, while political parties had passed through a period of shock, confusion and reorientation, the actual administration of government had not suffered disruption. The time, therefore, was propitious for implementing with the basic policy directives, by initiating the second phase of the removal and exclusion program, the extension of the purge to local government levels.

1. Preliminary Steps

By summer of 1946 legislation providing for basic reorganization of prefectural, city and rural government was in process of implementation, yet in the local government the old leaders were still in power. Since upon local officials fell the responsibility for administering the new laws, the presence of undesirable elements in the local government threatened to relegate the democratization program to the status of a paper reform. Yet the mere extension of screening under the criteria contained in Imperial Ordinance 109 to include local officials would not have solved the problem of supplying local government with new leadership, since these criteria were primarily designed to apply to leaders of national calibre and did not "sufficiently cover the official who in his local community interfered with the citizen's rights in a ruthless and authoritarian way." It was apparent that new criteria and new methods of administration were required. That the contemplated extension of the removal and exclusion program would enjoy strong support from the people of Japan was already apparent from the many letters urging such action that poured into the headquarters of responsible Allied authorities on every level, from the Supreme Commander in Tokyo to the Commanders of military government teams in the field.*

a. *Preparation of a Plan Undertaken.* It has been noted that the responsibility for administering the purge program had been placed on the Japanese Government, with the Supreme Commander retaining the right to review all actions for consistency with the principles and objectives laid down for the Government's guidance. In only a few cases had it been necessary to accomplish the purge of undesirable persons by direct instructions of the Supreme Commander. The extension of the program to the local government levels required the establishment of revised criteria for the application of the directive. To guide the Japanese Government in the formulation of plans for this second phase, the Government Section prepared a brief statement of policy and procedure to be followed in extending the purge to local levels. This statement, consisting of three paragraphs, read:

"1. The Japanese Government should prepare at once a comprehensive plan for (a) the exclusion from prefectural and municipal assemblies (city, ward, town and village) and the removal and exclusion from appointive positions in the prefectural and municipal subdivisions of personnel deemed undesirable under the letter and spirit of SCAPIN 550, January 4, 1946, (b) the application of the provisions of that directive to all elections of members of both houses of the Diet which may be held prior to September 1, 1948; and (c) the exclusion of all purged personnel from all other influential political or economic posts.

"2. The policies and procedures to be used in screening personnel who are candidates for prefectural and local assemblies and for appointive offices in prefectural and local government subdivisions should be uniform, and, insofar as practicable, substantially the same as those used for screening personnel for the Diet and for positions in the national government. The plan should also include a system of reporting which will enable the Japanese Government to inform this headquarters

*In a check sheet to the Government Section, Subject: Militarists in Local Government, dated June 22, 1946, G-2/CIS noted that: "Unfortunately under the currently outstanding 'purge directive,' SCAPIN 550, officials below the prefectural government level are not, except for candidates for Mayor running for a new term of office, subject to SCAPIN 550. Yet, from the point of view of the common people of Japan, the militarists and warmongers in public offices were these minor officials who in their daily contacts with the people actually moved them to war by speech and deed. To remedy this hiatus in sweeping the 'old line militarists' out of the local governmental offices of cities, towns, and villages, a new purge directive designed with special criteria to remedy the foregoing situation is needed. Such a directive is also necessary to prevent the drifting of former personages of national importance into these local offices, e.g., the case of MATSUMURA, Giichi who was removed per SCAPIN 1007, dated June 8, 1946." . .

promptly upon request of the current status and progress of screening activities

"3. The Japanese Government should submit promptly upon request six copies of the comprehensive plan referred to above to the Supreme Commander for the Allied Powers for review and approval and should simultaneously release the full text of the plan to the public."

In the check sheet to the Supreme Commander explaining the aims and purposes of of the policy statement, the Chief, Government Section, stated·

"2. As you know, legislation now pending in the Diet provides for the election of prefectural governors, mayors of cities and the chief executives of the local [illegible]

for 4 years

"3 There has never been any real doubt that the policy underlying the purge directive requires the exclusion from public office of all persons who fall within [illegible]

ency not only to ignore the spirit and intent of the basic directive, but to evade and circumvent the literal provisions of the purge directive by extremely legalistic and literal interpretations which in many instances are specious to the point of obvious political dishonesty The Government has just submitted informally a plan which provides that there will be no screening whatever of town or village headmen or city, town or village assemblymen

"4 There has also been a steady stream of rumors not corrected by the Government to the effect that those barred from running for the present Diet may become candidates at the next election In addition, we have [illegible]

conferences of purged Diet members

"5 I call your attention particularly to paragraph 3 of the statement, which would cause the Japanese Government [illegible]

at the same time, make the government assume its proper responsibilities.

"6 There has been a considerable volume of letters from Japanese to this headquarters, protesting against the failure to cleanse local officialdom I believe, however, that this use of the sanction of publicity to any plan formulated by the Japanese Government will result [illegible]

spur the Government to take effective action "

b. *First Draft Submitted for Review·* On October 21, 1946, the Japanese Government submitted a draft plan to the Government Section with a covering letter stating that the

"Japanese Government has drawn up a comprehensive plan for the extension of the scope of the application of the provisions of the reference memorandum (SCAPIN [illegible]

after making public the full text of the plan, to bring it into effect immediately "

(1) *Government Section Analyzes Plan* The following day the Chief, Government Section, replied by memorandum to the President of the Central Liaison Office, which stated in part that the plan

reflects commendable effort on the part of those officials [illegible]

lower echelons of government are to be reformed so as to afford the people a free and untrammelled opportunity to select public officers of their choice "

In keeping with these principles, the memorandum concluded, the plan should provide that:

[illegible]

perpetuation of entrenched local authority.

(c) Heads of block associations should be nominated and elected at a free election based upon universal adult suffrage

(d) All holders of important executive and policy-making positions in the local government should be screened, including chiefs of departments, bureaus and [illegible]

ment service. Failure to extend this principle would confirm and perpetuate the power and control of those officials who exercised a most direct and dominant influence upon the people in the welding of the totalitarian state which led to and prosecuted the war.

General Whitney's memorandum added that:

". . . it is my firm belief that, in order to provide the Japanese people with adequate opportunity to select leaders of their own choice, it is of the utmost importance that the above principles be scrupulously adhered to and widely publicized for the information of all the people. Indeed, it cannot be controverted that in many respects the extension of the purge to the lower levels of government is more essential to the establishment of a thoroughly democratic society than is its application to the higher levels, as it was on the lowest level that direct pressure in the shaping of the thoughts and actions and daily lives of the people was to be found in the gearing of the country for war."

(2) *Prime Minister States Government Position.* In reply to General Whitney's memorandum, the Prime Minister of Japan, Shigeru Yoshida, dispatched a letter to the Supreme Commander stating the Government's position.[17] Yoshida argued that "the regimentation of the military regime had been engineered by a clique of professional soldiers, of Government officials, right-wing reactionaries and some members of the Zaibatsu" and that the people including the lower ranks and local levels of officialdom were merely the objects of that regimentation. Taking the case of the Imperial Rule Assistance Association as an example, he pointed out that while national officers of the organization were responsible for misleading the people, local officials "shared neither the ideals nor a feeling of comradeship with the central executives." "With regard to the purge," he added, "the important thing is for the people to realize its justification. The purge should be carried out with the thorough conviction of the people that 'justice is being done where it is due' and when it goes beyond the limit, it is bound to cause distrust of the government and the purge." Yoshida then presented his arguments against the principles laid down by General Whitney.

(a) He had originally claimed that the criteria set for national officials should remain as the criteria for screening local officials, but since this had proved unacceptable to SCAP, he had evolved a system of dual criteria, one for local office and one for national office, under which an individual deemed ineligible for local office might still hold a post on the national level. Yoshida felt that for the Government to adopt a single standard might result in purging a man under the extension who had previously been passed under the original criteria, which would reflect on the integrity of the Government.

(b) The Prime Minister also voiced misgivings about any provision in the ordinance which would prevent wartime mayors of cities and town and village headmen from succeeding themselves.

(c) He noted that the Government had agreed to bring under the purge the chiefs of local Imperial Rule Assistance Association chapters, but reiterated his reluctance to purging other local influential members whom he described as "small functionnaires."

(d) In conclusion, Yoshida questioned General Whitney's statement that officials on the local level had played an important part in "shaping the thoughts and actions and daily lives of the people . . . and in gearing the country for war." Instead, the Prime Minister announced that he looked "to them to achieve the rehabilitation of the country, establishment of democracy and the continuation of the Emperor institution."

(3) *General MacArthur's Reply.*[18] On the following day, General MacArthur dispatched a letter to the Prime Minister in which he stated:

"Since the Government's primary purpose underlying the proposed extension of the purge into the sphere of local government is to afford the people the opportunity for new local leadership, I see no adverse effect in delaying its application to officials in the national levels of government until the next general election . . .

"As to your second point, there appears to be no justification for the exemption of local executive officials enumerated in General Whitney's memorandum.

"In regard to the heads of block associations, although

[17]Appendix B: 5g. Letter from Prime Minister Yoshida of October 31, 1946, concerning extension of purge.

[18]Appendix B: 5g. General MacArthur's reply to the Prime Minister, November 1, 1946, concerning extension of purge.

they cannot succeed themselves in office, they are eligible for any other national, local or elective or appointive posts, unless they fall under other provisions of the purge."

He added that some distinction might be made among various offices of local Imperial Rule Assistance Association chapters, and concluded by stating that "As soon as this one remaining point has been disposed of, the revised plan should be made effective by the Government."

c *Announcement of Purge Extension Plan* On Friday, November 8, 1946, the Government announced its expansion of the scope of the political purge. The plan consisted of three major subdivisions

(1) The first defined the extent to which the purge memorandum would be applied on the local level. Members of prefectural, city, town and village assemblies were to be screened under the extended criteria as were chief executives on the same governmental levels and other responsible officials in the local government, including department and bureau chiefs Specific mention was made of the fact that persons barred from national public offices under the memorandum would be barred from local office as well and vice versa.

(2) The second major subdivision concerned the extended criteria under which screening would be conducted The scope of positions listed under Category C of the memorandum was to include influential posts in city, town and village branches of any listed ultranationalistic, patriotic or terroristic society. The scope of Category D was to include the chiefs of the Imperial Rule Assistance Association and of the Imperial Rule Assistance Youth Corps (*Yokusan Sonen Dan*) on all levels, including village chapters Other influential positions, including division chiefs in the metropolitan branches of either organization and chief secretaries on the city and war level, were listed Persons who during the period of Japan's most aggressive expansionism, 1937 to 1945, had been chiefs of local branches of the Imperial Ex-Servicemen's Association (*Teikoku Zaigo Gunjin Kai*) were brought under the purge. Mayors and deputy mayors of cities and headmen of towns and villages who had been in office prior to Japan's surrender were not to succeed themselves in office This provision, however, did not bar them from running for or being appointed to any other office and was to remain in effect 4 years

(3) The third major subdivision described the new screening procedure which the extension of the purge to local levels necessitated Local public office qualifications examination committees were to be set up in each prefecture and in each city with a population of more than 50,000 The committees were to be nominated by the prefectural governor or the mayor of the city and membership was to be limited to persons who did not hold public office Municipal committees were to screen all municipal officials with the exception of candidates for mayor and for the city assembly. The prefectural committees were charged with the screening of all other local government officials except prefectural governors and assemblymen in the five principal cities of Kyoto, Osaka, Yokohama, Kobe, and Nagoya and the metropolis of Tokyo After the screening of an individual's questionnaire had been completed, the plan provided for the issuance of a certificate of eligibility stating that the individual in question did not fall under the memorandum All committees were required to publish the results of their screening immediately after its completion, and to report to the Central Committee in Tokyo upon the progress and status of their activities

Plans for the extension of the purge to economic fields were still being studied by the Japanese Government at this time, but were to be announced shortly thereafter

2 Extension Ordinances

On January 4, 1947, 1 year from the issuance of the original directive, the Japanese Government promulgated Imperial Ordinances Nos

1, 2, 3, and 4 of 1947 and Cabinet and Home Ministry Ordinance No. 1 of 1947 which incorporated into law all the features of the plan for extending the purge to the local levels of government, to economic entities, and to the media of public information.

a. *Imperial Ordinance No. 1 of 1947.* (1) *Public Service Defined.* "Public service" was defined as including positions in the national government entity, local governmental bodies and "positions of specified personnel of specified companies, associations and mass communication media." Public service was in turn divided into "principal public office" and "ordinary public office." If the holder of a principal public office was judged to fall under the purge he was to be removed and thenceforth included, but the holder of an ordinary public office who fell under the purge could be permitted to retain his position so long as he did not transfer to another public office. This was to permit the retention in government and industry of administrators, engineers and technicians whose skills and ability were needed by the nation and at the same time to eliminate the influence of the high officials who had made the decisions that influenced national policies.

(2) *Time Limit for Removal Set.* The time limit for removal of purgees from office was set by this ordinance at 20 days from the date of designation and a further extension of 10 could be approved at the discretion of the Prime Minister or the Prefectural Governor. Provision was also made for temporary retention when the Japanese Government considered it necessary to the national recovery.

(3) *Administrative Machinery Created.* This ordinance also established the legal basis for the administration of the purge, the screening of individual office holders, the collection of questionnaires, the issuance of certificates of eligibility and the designation of purgees.

(4) *Injunctions against Continuity of Influence.* In regard to its penalty clauses and injunctions, Imperial Ordinance No. 1 differed significantly from previous purge legislation. This law provided four injunctions against the continuity of power and influence on the part of any person designated as undesirable under the memorandum. Article X was designed to prevent any purgee from subverting family loyalty into a device for maintaining his own power. It forbade any relative of a purgee within the third degree by blood, marriage or adoption from succeeding to the appointive office from which the purgee had been removed. The justice of this article had been questioned by the Japanese Government.[19] In reply, SCAP had explained that:

"It is not a punitive measure and no one is adjudged guilty of any offense, nor is it intended that anyone be punished thereunder . . . Any realistic program for removing the influence of individuals purged from influential economic posts must meet effectively the vital and irrepressible issue of collusion. The provisions in the proposed Imperial ordinance . . . recognize the existence of this problem by prohibiting the maintenance of continuity of influence. The provision merely sets up mechanics which will give fair assurance that the purge will not become a mockery through the device of dummies."

SCAP then pointed out that "the presumption of collusion among members of a family" was not novel, and that there were many examples in the Japanese law illustrating "that members of a family, as such, are subject to different standards of conduct than those outside,and are considered as having a strong community of interest."[20] Articles XI and XII were complementary in nature. The first prohibited that any person in the public service accept advice, instruction, or compensation from a purgee in connection with official duties, while the second prohibited that any purgee give advice, instruction or compensation to an official in the public service. Article XIII forbade any purgee to enter the offices of the company from which he was removed or to set up his dwelling or place of business on

[19]Appendix B: 5h, Letter from Prime Minister Yoshida, December 21, 1946, concerning extension of purge.

[20]Appendix B: 5h, General MacArthur's reply to Prime Minister concerning extension of purge, December 26, 1946.

the premises of such a company Further, purgees were prohibited participation in any capacity in public information media

(5) *Penalty Clause Included* Twice during the implementation of the first phase of the purge the Government had issued warnings to purgees not to participate in activities from which they had been removed or barred Later SCAP had also issued a statement that

' Political purgees who talk about their impending return to public life, or continue to exercise influence in the councils of their political party, are violating the spirit of the directive which removed them The Japanese people are entitled to demand that political parties reject the counsel and influence, open or secret, of those of their members who are affected by the purge Parties which fail to observe this simple principle justly draw unto themselves the suspicion of all peace-minded Japanese as well as of the Occupation Forces which seek to rid Japan of the bad influence of the past "

The new ordinance was designed to counter this tendency on the part of purgees It included a penalty clause subjecting to fine or imprisonment any person who violated the injunctions against continuity of influence Similar penalties were provided for persons who falsified or willfully omitted relevant material from their questionnaires, who refused information concerning their status under the Directive, or who submitted deliberately false information to SCAP

b *Imperial Ordinance No 2 of 1947.* This ordinance set up public office qualifications examination committees on the three levels provided for in the approved plan, national, prefectural and municipal, and defined the jurisdiction of each It required that the municipal committees report their actions and recommendations regarding persons screened to the prefectural committees The prefectural committee in turn made recommendations on the cases under its jurisdiction to the governor who, acting upon the recommendation, either issued a certificate of eligibility to the individual in question or designated him as falling under the memorandum The law also provided that the governor would then publish the result of his action, make the questionnaire of the individual immediately available for public inspection, and submit a report to the Prime Minister in Tokyo. A parallel course of action was prescribed for the Central Screening Committee as the Public Office Qualifications Examination Committee at the national level was called The Prime Minister, acting upon the recommendation of the Central Screening Committee, was responsible for issuing the certificate of eligibility or making the designation In cases where the Central Screening Committee postreviewed the action taken by a prefectural committee and in its report to the Prime Minister indicated that some action was necessary, the Prime Minister was authorized to direct the prefectural governor accordingly

As a result of this ordinance, a central screening committee in Tokyo, 46 prefectural committees and 118 municipal committees in cities with a population of more than 50,000 were established The Central Committee was composed of nine members while prefectural and municipal committees were to have five To assist the committees in carrying the heavy burden of work which the magnitude of the screening schedule imposed, provision was made for appointing temporary commissioners who might assist the regular commissioners in any capacity but who were not permitted to vote in the final decision of the committee Provision was similarly made for a secretariat to serve the committee by handling the clerical, administrative and investigative aspects of the work

c. *Imperial Ordinance No. 3 of 1947.* This law provided that no mayor or deputy mayor, headman or deputy-headman of a ward, town or village who had held office from prior to September 1, 1945, until September 1, 1946, could succeed himself in that office This prohibition was to remain in force for 4 years after the coming local elections.

d. *Imperial Ordinance No. 4 of 1947.* This law provided that heads of block associations should be elected by universal adult suffrage

by residents of the community concerned.*

e. *Cabinet and Home Affairs Ministry Ordinance No. 1 of 1947.* This law laid down the procedure for the Prime Minister and prefectural governors to follow in notifying individuals of their designation under the Memorandum and in issuing the certificate of eligibility, and for the individuals to follow in submitting their questionnaires and in filing their notifications of candidacy. More important, however, it established the criteria under which the screening of local and national office holders would be conducted. Categories A, B, E, and F remained unchanged and Categories C and D were extended to the local levels as prescribed by the announced plan. Category G as defined by this ordinance embraced both the March 10 and the May 16 interpretations of the preceding year. In addition Category G provided for the removal and exclusion of responsible officials in publishing enterprises, theatrical and movie concerns and in other media of public information whose companies had participated in propaganda activities. Similarly, responsible policy-making officials of munitions concerns, of conspicuously monopolistic combines, specified holding companies, listed concerns having an authorized capitalization in excess of 100 million yen and other companies and financial institutions specifically named which commanded excessive economic power, were required to be examined.

3. Administration of the Purge Extension

a. *Establishment of Screening Committees.* In accordance with the terms of Imperial Ordinance No. 2 the Japanese Government set up a Central Screening Committee in Tokyo, 46 prefectural screening committees and 118 municipal committees in cities with a population of more than 50,000. Nominees for the prefectural and municipal committees, some 2,500 in number, were screened by the central committee early in February 1947 and were ready to begin screening activities themselves by the twentieth of that month. They faced a formidable task. The Government's original estimate of the number of office holders who would have to be screened under the new criteria was between 500,000 and 700,000 and subsequent developments revealed the latter figure to be more nearly correct.

An effort was made by the appointing authorities to enlist the services of individuals who had achieved prominence in their chosen professions and who would bring to the committee a broad knowledge of various fields of activity. Thus the Cabinet appointed to the Central Screening Committee Yasusaburo Hara, a highly successful industrialist; Tatsuo Iwabuchi, a journalist and political commentator who had been elevated to the House of Peers in recognition of his literary achievements; Masuo Kato, American-educated editor and foreign correspondent; Kozaemon Kimura, vice speaker of the Lower House; Shikao Matsushima, career diplomat who had retired from the Government service with rank of Minister; Jiro Miki, president of the Steel Cable and Line Workers' Union; Kazuo Okochi, professor at Tokyo Imperial University; Riichi Shono and Fukichi Unno, both eminent lawyers with established reputations in the legal world but men who had refrained from politics and who would not be motivated by political considerations. Similarly on the prefectural level the governors sought to select prominent persons whose integrity could not be questioned to serve on the prefectural screening committees. In Fukuoka prefecture, for example, the screening committee included a Catholic Bishop, the president of the Fukuoka Bank, the presiding officer of the Fukuoka local court, a professor at Kyushu Imperial University and a prominent local attorney.

*The Chonaikai and the Burakukai were closely associated with the Imperial Rule Assistance structure during the war and were in a sense the perpetuation of a wartime system. Their continued existence was held to be incompatible with the principle of local autonomy and accordingly on April 1, 1947, they were abolished and their administrative functions turned over to local Government offices.

b *Preelection Screening Schedule.* In anticipation of the forthcoming elections, a screening schedule was drawn up which would enable all prospective candidates for elective office to know their status under the purge by the beginning of March 1947. The initial screening schedule was as follows

	Group to be screened	*Approximately number involved*
By February 15	Holders of principal public offices at the prefectural level	5,000
By February 20	Holders of principal public offices at the municipal level and election Administration Committee members	5,200
By February 25	Candidates for governor of prefectures, mayors of five principal cities and members of House of Councillors	3,500
By February 28	Candidates for prefectural assemblymen	21,000
	Candidates for mayors and headmen of towns and villages, superintendents of poll stations and superintendents of the vote	12,500
March 20 to April 15	Holders of principal public offices in organizations under pars 10, 11 and 12, Appendix II of Cabinet and Home Ministry Ordinance No 1, 1947	6,000
March 25 to April 15	Candidates for assemblymen of cities, towns and villages	15,000
April 16 to April 30	Holders of principal public offices in organizations under pars 7, 8, 9 and 13, Appendix II of Cabinet and Home Ministry Ordinance No 1, 1947	10,000
	Total	78,200

c *SCAP Supervision of Purge Administration* To eliminate unnecessary duplication of effort and duality of control, as well as to centralize responsibility within the Headquarters, sole supervision over the Japanese Government's administration of the purge extension program was delegated to the Government Section. Shortly after the promulgation of the purge extension ordinances, the extent of the Government Section's responsibility was delineated by a staff memorandum which stated that

"The Government Section is charged with staff responsibility under the reference directives (SCAPIN 550 and 548) for all matters relating to removal and exclusion of Japanese personnel from national and local elective and [illegible]

terpretations, opinions, instructions and questionnaires with attached record cards relating to the application of the reference directives, will be given to or received from the Imperial Japanese Government by the Government Section It will furnish copies of such questionnaires and attached record cards to the civil intelligence section for its files "

(1) *Initial Responsibility Placed upon Japanese* The January 4th directive had placed responsibility for the formulation and administration of a purge program upon the Japanese Government In an administrative memorandum to Government Section personnel dated April 8, 1947, General Whitney clearly defined this policy He pointed out that, while the Supreme Commander reserved the right to review any case at any time to determine whether the decision of the Japanese Government in the case was correct, that decision would be considered as final, unless

"a The decision is contrary to the purge directive and the implementing 1947 ordinances of the Japanese Government

"b There is material evidence which the Japanese Government did not possess or did not consider, or

"c The decision is clearly unreasonable

"If the Japanese Government could on due consideration of the case as a whole, reasonably have reached its conclusion, the Government's decision is conclusive Such decision is not disturbed merely because there is [illegible]

reasonable basis for the decision of the Government "

In accordance with this policy, all questions relating to the purge and all petitions submitted by individuals outside General Headquarters were to be referred to the Japanese Government.

(2) *Supervision by Military Government Teams.* Similarly, Military Government officers were cautioned against interpreting the purge directives or ordinances except as specifically instructed to do so. They were further instructed that their activities should not in any way interfere with or inhibit the procedures or actions of the screening committees or government officials charged with administration of the purge. While they were directed to report failures of responsible officials to act in accordance with the terms of the ordinances, violations of the injunctions by purges and failures to comply with the publicity requirements, they were not to sit in any screening committee meetings or to conduct unauthorized investigations of the administrative functioning of the committees. The Government Section maintained liaison between Supreme Headquarters in Tokyo and Military Government units in the prefectures and regions of Japan by means of frequent inspection trips. The Government Section lecture teams which were periodically dispatched to instruct military government officers always included one official thoroughly familiar with the purge and its administration.

d. *The Purge Publicity Program.* A basic concept underlying the purge had been the participation of the Japanese people in its administration. SCAP constantly sought to avoid giving the impression that the removal and exclusion of undesirable people from public life was done by fiat handed down from on high and beyond the reach or comprehension of the common citizen. Keeping the people in ignorance of the law had been a basic technique of government in Japan. The citizen had long been taught that such matters were better left to the officials who alone understood them and that his participation was neither invited nor desired. By a variety of methods SCAP and the Japanese Government now tried to overcome this heritage of indifference.

(1) *Questionnaires and Records Made Public.* With a view toward using public interest as a check on any ill-considered or unjust action by the screening committees and responsible officials, the ordinances provided that the Prime Minister and the governors would announce the results of screening every two weeks. At the same time a bulletin listing the names of all individuals screened and stating what action had been taken in each case was required to be posted. The law also required that the questionnaires of all persons screened would be available for public inspection at the office of the screening committee concerned. In the case of candidates for elective office, the law required that a duplicate questionnaire be available at the office of the appropriate election administration committee as well. To ensure enforcement of these provisions, Military Government teams were instructed to observe where and when responsible officials posted the bulletins and for how long the bulletins remained on display. Teams were also directed to observe and report upon the preservation and availablity of questionnaires, and the manner in which responsible officials had kept the press informed of the screening action.

(2) *Purge Program Explained to the People.* The provisions of the law requiring that questionnaires and bulletins be available for public inspection were not regarded as sufficient in themselves. An effort was also made to awaken public interest and a sense of responsibility regarding the purge among the Japanese people. The newspapers were urged to carry details of the directives and to emphasize the fact that questionnaires could be examined by anyone, so that the voters could familiarize themselves with the careers and records of men who were running for office and rival candidates could check upon the accuracy and honesty of their opponents' questionnaires. Radio programs were also undertaken, and for several weeks preceding the April elections speakers went on the air to explain the purpose and administration of the purge to the radio audience. Special programs

were also presented. For example, on February 28, 1947, State Minister Kanamori* appeared on a busy corner of the Ginza, Tokyo's Broadway, and in the course of a full hour answered all questions on the purge put to him by members of the crowd that soon gathered to hear him speak. This often-heated discussion between a Cabinet member and the people was then rebroadcast to the nation. Two weeks later officials in charge of the Japanese Government's administration of the purge conducted a round table discussion of the program over the national network, and later representatives of the principal political parties participated in a similar radio round table. Government Section spokesmen also participated in the publicity program. Prior to the elections they held conferences with representatives of the Japanese and Allied press in which the purge program was discussed in detail and questions of correspondents and reporters were answered. During the summer and fall, as important phases of the program neared completion, representatives of the press were called together to receive reports of the action that had been taken and to be reminded that through them the people of Japan must learn that upon the individual citizen rests responsibility for assuring that the old leaders, whose policies had led the nation into ruinous war and misery, do not reoccupy the seats of power.

4. Results of the Purge Extension

April 1947 was a month of elections in Japan. It was also a time of great activity among the screening committees as they labored to determine the qualifications of candidates for every elective office. Statistics as of April 26, the day following the elections, to the House of Representatives reveal that 269,855 persons had been screened since the promulgation of the extension ordinances. The Ministry of Home Affairs reported the results of screening the 5,327 candidates for the principal elective positions in the government as follows:

	Screened	*Barred*
House of Councillors	1,406	31
House of Representatives	3,427	138
Prefectural Governors	451	20
Mayors of the five principal cities	43	1

How many potential purgees had decided not to run for public office lest they be found to fall under the memorandum could not be ascertained, but it was obvious that the ordinances proved a healthy preventive measure. In the face of the approaching elections Imperial Ordinance No. 1 had been strengthened to provide a safeguard against the continued participation in politics of potential purgees who, without filing candidacy themselves, were exerting their influence in behalf of other candidates of similar political convictions and loyalties.** This safeguard provided that no person subject to the purge could participate in an election campaign or engage in any form of political activity. It empowered the Prime Minister or the responsible governor to require the screening of any person engaging in political activities on the basis of reasonable evidence indicating that he might be subject to the memorandum, and to issue an injunction prohibiting such individual to continue his political activity until his status had been determined. However, to prevent misuse of this executive power the law required that the status of any such individual be determined within 72 hours.

a. *Effect Upon the Yoshida Cabinet.* Prior to the promulgation of the ordinances in January, Prime Minister Shigeru Yoshida had requested that public office holders who fell

*Tokujiro Kanamori served in the Yoshida Cabinet as a Minister Without Portfolio. He generally spoke for the Government during the interpellations of the new Constitution in the summer of 1946. In February 1947 he was placed in charge of the purge and was the ranking liaison officer between the Cabinet and SCAP on all purge matters.

**By Imperial Ordinance No. 77, March 12, 1947, the scope of Articles IV and XVI was expanded and Article XV was added to Imperial Ordinance No. 1, 1947.

under the extended criteria be allowed to retain their positions until the elections. This request was granted by SCAP. For some time before the 25th of April, therefore, it was apparent that the current cabinet included certain purgees in ministerial posts. First Yoshinari Kawai, Minister of Welfare, fell under Category G as a "person who actively engaged by writing, speech or action in instigating war." He was followed by Tokutaro Kimura, Justice Minister, who, as wartime national director of the Great Japan Military Virtue Society and chief of the Shibuye branch of the Imperial Rule Assistance Youth Corps in Tokyo, fell under the memorandum on two counts. His tenure of office, which had been marked by dissension with the judges who served under him and by repeated attempts to restrict the independence of the judiciary, thus ended in his exclusion from all future government service.* The Japanese Government purged Mitsujiro Ishii who had served as Commerce and Industry Minister in the Yoshida Government. As managing editor of the *Asahi Shimbun*, Tokyo's most widely read newspaper, from 1937 to 1940, Ishii fell under the provisions of Category G relating to the field of public information. On the following day the Government, acting in response to a memorandum from General Whitney, designated Finance Minister Tanzan Ishibashi as an undesirable person. In his memorandum to the Central Liaison Office ordering the removal and exclusion of Ishibashi, who had been elected to the House of Councillors from the Prefecture of Shizuoka, General Whitney declared:

"As editor and president of the *Oriental Economist* he was responsible for the policies of that publication which supported military and economic imperialism in Asia, advocated Japan's adherence to the Axis, fostered belief in the inevitability of war with the Western Powers, justified suppression of trade unionism and urged the imposition of totalitarian controls over the Japanese people."

b. *Effect on the Diet.* In the National Diet the Democratic Party (*Minshu To*), successor to the old Progressive Party, suffered the heaviest loss in leadership from the extension of the purge. Wataru Narahashi, member of the executive committee and the man who was generally conceded to be the moving spirit behind the party's reorganization, was designated for his unofficial participation in the China Incident.** Five days later, on April 9, Ken Inukai, another member of the party's executive committee, was purged for having been an advisor to the government of China's wartime puppet president, Wang-Ching-Wei, and at the same time Takeshige Ishiguro, Democratic Secretary General was designated under two categories, D and G. He was replaced by Usaburo Chizaki, a wealthy Hokkaido contractor and political boss, who was himself purged only 2 days later. Although the Democratic leaders claimed that the screening committee had acted at the instigation of the Liberal Party during the month of April, the same committee also found Matsuhei Matsuoka, president of the Liberal Party Club, unfit for office. The Social-Democratic Party, which was to emerge from the elections with a plurality in the Diet, did not escape the pre-election screening unscathed. Two of its important officials fell. Haruji Tahara, American-educated Diet member from Fukuoka, was designated for having been a division chief in the Asia Development Headquarters, while Hiroshi Imamura, representative from Nagasaki, was found to have maintained membership in six ultranationalistic organizations and was, therefore, removed from office under

*On January 31, 1947, Justice Nemoto of the Supreme Court filed a petition with SCAP requesting the resignation of Kimura on the grounds that his militaristic affiliations, his background as a public procurator and his actions while in office rendered him unfit to serve as Minister of Justice.

**As Chief Secretary of the Shidehara Cabinet, Narahashi had been the government official most responsible for the implementation of the initial phase of the purge in 1946. He immediately claimed that no legal basis existed for his designation and that the screening committee had been motivated by political considerations. The Screening Appeals Committee in its final session of May 10, 1948 recommended favorable consideration of his case. This recommendation was approved by the Government Section and Narahashi's designation was rescinded on May 21, 1948.

Category C After the elections and prior to assuming office, all successful candidates for important elective posts screened by the central committee were reexamined. Eleven members-elect to the House of Representatives and four members-elect in the House of Councillors were removed.

c. *Extent of the Local Government Purge.* Prior to the elections 65,024 candidates were screened for local office After the elections but before the successful candidates assumed office, local committees postscreened 158,747 persons who had been elected to the assemblies in cities, wards, towns, and villages * The central screening committee also postscreened 2,803 successful candidates for prefectural assemblies and 284 assemblymen of the five principal cities Under the provisions of Imperial Ordinance No 3 which forbade local chief executives and their deputies to succeed themselves in office, 1,160 former mayors and deputy-mayors, ward heads, headmen and deputy headmen of towns and villages were prevented from running for election By March 20, 1948, statistics on the work accomplished by the local screening committees were as follows.

1 Total number of questionnaires received	665,561
2 Total number of persons screened	623,456
3 Total number of persons passed	617,062
4 Total number of persons barred	2,093
(a) Local demobilization personnel	0
(b) All other	2,093
5 Total number of persons removed	1,867
(a) Local demobilization personnel	883
(b) All other	984
6 Total number of persons barred or removed under the following provisions of the memorandum	

	Demobilization personnel	*All others*
A	0	3
B	0	1,191
C	0	110
D	0	1,343
E	0	9
F	0	0
G	0	1,235
Compound	0	69
Total	0	3,960

7 Total number of cases pending	2,434
8. Total number of persons screened for.	
(a) Appointive office	324,009
(b) Elective office	297,778
(c) Other persons	1,669

IV. Appeals Board

Provision was made for appeals machinery to correct possible injustice in individual cases when, shortly after the issuance of the purge directive on January 4, 1946, the Japanese Government proposed there be created a special organ to which such cases could be referred. General Whitney, in an aide memoire for the Prime Minister, had voiced approval of the Government's proposal in these words·

"If [illegible]

in the Japanese paper for the purpose of holding hearings and making recommendations to the Japanese Government for the exemption of such individuals from excluded categories, provided that

(1) The individual who now holds a public office is first removed from that office in compliance with the directive

(2) The individual, whether or not he now holds public office, is not made eligible to run for the Diet in the ensuing election

(3) The action taken by the Commission of Inquiry is submitted to this Headquarters for review prior to the reinstatement in public office of any official removed therefrom "

During the first year of the administration of the purge the Japanese Government found no need for an elaborate appeals machinery. Appeals from designation under the purge were insignificant in number. The few that did

*The figure 158,747 includes most of the 65,024 persons who were screened before the elections, since all successful candidates were rescreened

arise were given individual consideration by the Cabinet, and, in some cases recommendations for reinstatement were made to SCAP. Early in 1947, however, a nine-member body was set up to review appeals. Any person designated under the purge ordinance was eligible to file an appeal to the Prime Minister, providing this action was taken within 3 months from the date of his designation, or in the case of persons previously designated, within 3 months from the promulgation date of the ordinance.[21]

The Appeals Board announced the release of its first case in April 1947. Since this recommendation had not been submitted to SCAP for review prior to final action, as required by SCAP policy, General Whitney, Chief, Government Section, clarified the policy in these words:

"(a) The Supreme Commander has consistently recognized the propriety of appellate machinery within the Japanese Government to investigate and bring to light any injustice in the application of the memorandum for the Japanese Government dated January 4, 1946 (SCAPIN 550). Accordingly, there is no fundamental objection to the continued existence of the Appeals Board in a purely advisory capacity.

"(b) It is desired, however, that no person who has been designated as falling under the memorandum and thereby removed or barred from the public service be reinstated until his case, with a report of the appellate proceedings, has been submitted to this headquarters for review and prior approval."

On July 5, 1947 the Japanese Government was informed that individuals need not be removed from office prior to submission of their appeals, providing no person be retained in office awaiting the outcome of the appeal. The board functioned for more than a year until, on March 27, 1948, the Japanese Government, recognizing that the purge program was complete, issued a Cabinet order abolishing it, effective May 10, 1948.[22] This order also provided that no appeals be accepted by the Board after April 15, 1948 and required that the final report of the Board be made prior to May 10, 1948.

To correct any gross injustice subsequent to this date provision was made for direct appeal to the Prime Minister. As of May 10 when the Appeals Board ceased to exist, 1,471 persons* had appealed and, pursuant to the board's recommendations, the Japanese Government shortly thereafter recommended the release of 150. Of this number 143 recommendations were favorably considered by the Government Section and seven were rejected.

V. Provisional Designation

As the administration of the purge extension progressed, it became obvious that some action must be taken to name potential purgees who, fully aware that they fell under the memorandum, intentionally refrained from occupying any screenable positions but continued to exercise power and influence behind the scenes. Furthermore, so long as they remained undesignated some of them continued to draw pensions and other benefits to which purgees were not entitled.** It was particularly in the economic field that the existence of these "invisible purgees," aided by the paternalism that has characterized Japanese industry and by the strongly codified system of loyalties which distinguishes Japanese social mores, threatened

[21] Appendix B: 5m, Appeals Procedure, Imperial Ordinance No. 65 of 1947, issued March 1, 1947.

[22] Appendix B: 5n, Cabinet Order No. 62, March 27, 1948, concerning abolition of Public Office Qualifications Examination Committee and Public Office Qualifications Appeals Board.

*This figure includes 386 regular army officers whose counterevidence was filed after the 30-day period had elapsed. Their letters of exception were therefore processed as appeals.

**Article 5, Imperial Ordinance No. 1, 1947, forbids the payment of pensions to persons removed from office under SCAPIN 550.

to nullify the intent of the Supreme Commander's directive In the field of politics this problem had been recognized and Imperial Ordinance No 77 was promulgated to prevent potential or "invisible" purgees from participating in politics.

1. Preliminary Survey Conducted

In May 1947, therefore, SCAP directed the Japanese Government to submit "plans for screening former principal public office holders in economic organizations listed in the ordinances who for any reason are not now subject to screening but who held such offices in the listed economic organizations between July 7, 1937, and September 2, 1945" The central screening committee secretariat accordingly undertook a survey of all potential purgees in the economic field, completing a tentative list of purgeable office holders by the end of June This survey was conducted with a view to the designation of potential purgees in all categories

2. Provisional Designation Becomes Law

By the terms of Cabinet Order 119 of 1947, the technique of provisional designation was incorporated into the purge laws in the form of two amendments to article VII of Imperial Ordinance No 1 The first amendment empowered the Prime Minister to designate any person who appeared on the basis of reasonable evidence to fall under the memorandum He was further authorized to make this designation without collecting any questionnaire from the individual in question, but was required to forward to the central screening committee the relevant documentary evidence upon which the designation was based The second amendment authorized any person who believed that his designation had been erroneously made to file with the Prime Minister a letter of complaint, together with his questionnaire, within 30 days from the date of provisional designation The law then provided that the Prime Minister should, in accordance with the central screening committee's recommendation, designate the individual as falling under the memorandum or certify that he did not fall If no letter of exception was filed within the 30-day period, the law provided that the provisional designation should become final under the provisions of the basic ordinance

3. Provisional Designation Is Enforced

Immediately after the promulgation of the order, the central screening committee secretariat undertook the difficult assignment of listing persons to be provisionally designated in all fields and under all categories By early October the corrected and final list of all persons who had occupied purgeable positions in economic enterprises during the critical period had been completed and those listed thereon had been officially notified by letter that they were provisionally designated under the memorandum Of the 1,405 persons so notified, 120 filed letters of complaint showing cause why they should not be designated In 88 cases the counterevidence was rejected by the central screening committee after due consideration and in 32 cases it was sustained. In all, 1,312 undesirables were barred from future public service under the economic phase of the provisional designation program which was the first to be successfully completed

In September the Government had compiled the names of all men who had held purgeable positions listed under Category F (Governors of Occupied Territories) and the names of the officials who had occupied the high government posts listed under the interpretation of Category G These men, 93 in number, were provisionally designated the following month

Assembling of records and the compilation of names continued through the fall until, on November 28, all persons presumed to fall under Category B (career military men), Cate-

gory C (members of ultranationalistic organizations), Category D (officers of the rule-aid organizations) and the remainder of Category G including officials of public information media companies were provisionally designated. This process entailed the designation of thousands of individuals. Therefore the earlier technique of dispatching letters to provisional designees had to be discarded.* Instead, their names were listed in a special supplement of the Official Gazette. On November 28 the prefectural governors provisionally designated by individual letter the men who had held purgeable positions in local branches of the Imperial Rule Assistance Association and the Imperial Rule Assistance Youth Corps. In the months between this mass designation and the conclusion of the purge, the consideration of many thousands of cases of counterevidence occupied the attention of the Japanese Government agencies administering the purge program. A complete statistical breakdown of the provisional designation phase will be found in the statistical summary at the end of this history.

VI. Conclusion

On March 25, 1948, with the conclusion of the purge program in view, the Japanese Government announced that "confident of the completion of screening by May 10th," it had determined that the screening committees both central and local and the Appeal Board should be abolished as of that date. However, in order to avoid any inequities in the administration of the purge either through error or oversight, the government announced that it intended to continue screening new applicants for public office. The deadline for submission of appeals was set at April 15, 1948, but the statement that "anyone who finds gross injustice in future designation is authorized to file an appeal with the Prime Minister." On the following day General Whitney clarified the attitude of the Supreme Headquarters toward completion of the purge. Pointing out that "the purge program, while fully consistent with the purposes of the Japanese Government and the people in chartering a democratic future, is one of the direct requirements of the Potsdam Declaration," he added, "as such final action taken thereunder is regarded as of a permanent nature for which the Allied Powers will unquestionably hold future Japanese Governments fully responsible."

VII. Appraisal

The purge program envisaged at Potsdam and thereafter carried forward as a major occupation objective was a requirement of the Allied Powers, but it no less served the interests of the Japanese people whom it helped to rid of the false leadership which carried Japan into war and destruction, and who were enabled by it to choose new leaders capable of charting the nation's course toward a more hopeful future. It was not conceived as nor was it allowed to become a punitive measure to exact vengeance upon a defeated enemy. The basic postsurrender policy directives empowered the Supreme Commander to take into custody those persons who fell within the scope of the directive, but he, motivated by the principles of

*As will be seen from the statistical summary at the end of this section, 118,301 former army and navy officers, intelligence agents and gendarmes were designated under Category B alone.

justice and tolerance to which he dedicated himself aboard the *Missouri*, did not choose to exert that authority In his mind the primary purpose of this phase of the Occupation was the removal of leadership tainted with war responsibility from the political, economic and social life of Japan—that under a new leadership not so tainted, democratic growth might be possible

Throughout its application, therefore, the basic philosophy of the purge program was that it should be a means of creating a new democratic leadership responsive to the will of the people. Succeeding Japanese governments gradually came to appreciate this positive concept. Thus, Justice Minister Yoshio Suzuki spoke not only for his government but *for all progressive and thinking* Japanese when he said, "It is our solemn duty to purge those who led the people into waging war Needless to say, we must do so voluntarily If anyone disapproves of this he does not know the present position of Japan " Admonishing those who did not recognize Japan's obligation in this regard, he added

"It is regrettable that there are people in this country *who do not consider the purge question sternly enough* In Germany 100,000 people have been thrown into jail and 1,000,000 fined, sentenced to menial labor, their property confiscated, deprived of their civil rights or sentenced to hard labor In our country, however, those who precipitated the nation into war are only barred [illegible]

our country "*

The purge program was a vital part of the whole program of democratic reform in Japan. Without it, all subsequent attempts at reform would have been futile It was not an end in itself but the initial phase of an attempt, unprecedented in history, to change a nation's leadership without resorting to violence and bloodshed, and to redirect the course of a nation's policy without disrupting the continuity of its institutions Despite dire predictions to the contrary by those out of sympathy with its underlying philosophy, the political, economic and social leadership of Japan as a result of its application is today far healthier than before the Occupation.

*This statement was part of an article in the *Yomiuri Shimbun* for December 5, 1947 In it the Justice Minister defended the Government's action in purging two prominent politicians, Rikizo Hirano and Heima Hayashi, for ultranationalistic activities

Part II. Economic Phase

I. Basis of the Economic Purge

1. The United States initial postsurrender policy for Japan, approved on August 29, 1945, provided specifically that a principal means of achieving the announced objectives of the Occupation would be the elimination of militarists and ultranationalists from the economic life of Japan. It further provided that the Supreme Commander would "prohibit the retention in or selection for places of importance in the economic field of individuals who do not direct future Japanese economic effort solely toward peaceful ends."

2. In keeping with the broad policy outlined above, the Joint Chiefs of Staff directed SCAP in September 1945 to insure that no persons be "allowed to hold . . . positions of responsibility or influence in . . . important private enterprise who have been active exponents of militant nationalism or aggression." Specifically, SCAP was directed to prohibit the retention in or selection for positions of important responsibility in industry, finance, commerce, agriculture, or public or private institutions, agencies or organizations, of any persons who had been active exponents of militant nationalism or aggression, and of "all those who do not direct future Japanese economy solely towards peaceful ends." In the absence of evidence to the contrary, satisfactory to SCAP, he was directed to assume that persons who held key positions of high responsibility since 1937 in any of the fields enumerated had been active exponents of militant nationalism and aggression.

3. In keeping with the over-all concept of the purge program, the directives applying to the economic, financial and industrial fields were of a preventive rather than punitive nature. They were designed to insure that the militarists and ultranationalists would not again be in a position to direct Japanese economy to support aggression.

II. The January 4, 1946 Directive

1. The initial purge directive was designed to implement those portions of the Joint Chiefs of Staffs' directive which related to the removal and exclusion of undesirable persons from governmental posts.[23] The implementation of those portions dealing with the economic fields was left for a later date, first, because extensive research and study were deemed necessary to prepare adequate criteria, and second, to insure that the program would cause a minimum of disruption to the necessary effort toward economic recovery.

2. The economic field was, however, affected by the initial purge directive to the extent that it provided for the removal from important policy positions in government corporations of those persons falling within the purview of the directive. The appointment of such persons to offices in corporations, associations and other organizations in which the national or prefectural governments or any of their agencies "have a financial interest representing actual or working control" was also prohibited. Further, those persons who were influen-

[23]Appendix B: 5b, SCAPIN 550, January 4, 1946.

tial officers of financial and development organizations involved in Japanese expansion were included as one of the categories of undesirable personnel within the meaning of the directive because they had actively supported Japan's program of aggressive expansion and exploitation in foreign countries Thus, although the economic phase of the purge program was not implemented until later, the basis on which it was to be carried out by the Japanese Government was established in the January 4, 1946, directive.

III. *Early Implementation by Japanese Government*

1. On February 27, 1946 the Japanese Government promulgated Imperial Ordinance No 109, which made subject to screening the staff officers of 114 corporations, associations and other organizations under the special control of the government It listed 33 financial and development organizations involved in Japanese expansion whose policy officers and principal branch managers in territory occupied by the Japanese Armed Forces would be subject to the purge

2 A cabinet announcement issued by the Japanese Government on March 10, 1946, which defined in some detail the criteria applying to "additional militarists and ultranationalists," brought within the scope of the purge businessmen who had been prominent in activities proscribed under this category (Category G) and officials of companies which had produced the weapons and sinews of war These two groups of persons were defined in greater detail in a more comprehensive and detailed interpretation of Category G prepared by the Government on its own initiative on May 16, 1946 but not announced at the time lest such an announcement interfere with the completion on time of screening already scheduled in other fields Under these definitions 139 persons were removed from corporations, associations and other organizations in which the government had a special interest Seventy-eight persons were purged because of positions they held as officials of listed financial and development organizations involved in Japanese expansion.

IV. *Interim Developments*

1 Subsequent to the issuance of SCAPIN 550 extensive research was conducted with the object of preparing a program to implement the provisions of the JCS policy directive which pertained to the removal and exclusion of undesirable persons from positions of responsibility in industry, commerce, and finance By mid-April the elections of 1946 were over and most of the screening had been completed On April 20, 1946, therefore, the Government Section initiated discussions and coordination with other interested staff sections, principally the Economic and Scientific Section of General Headquarters Concurrently, the problem was discussed with officials of the Japanese Government. During the subsequent three months these officials submitted informal plans which were found inadequate. On August 19, 1946, at which time sufficient statistical data had been obtained for Government Section to gauge accurately the nature and extent of the program which must be instituted, a statement of policy concerning the purge program was prepared and, upon approval by the Supreme Command-

er, delivered to the Japanese Government on August 20, 1946. This statement of policy as it affected the economic field provided that the "Japanese Government should prepare at once a comprehensive plan for . . . the exclusion of all purged personnel from . . . all influential . . . economic posts." Another provision was the requirement that the Japanese Government publish the full text of such a plan simultaneously with its submission to SCAP. This resulted in the resignation of a considerable number of affected persons prior to the actual promulgation of the plan as law.

2. The purpose of this statement was to encourage the Japanese Government to take the initiative in the necessary implementation of the purge in economic fields and to afford an opportunity for the Japanese people to review and criticize the proposed action of their government. At the same time these instructions as to policy were handed the government, the Japanese officials concerned were told to work out the plan and methods of implementation on their own initiative without prior consultation with or advice from SCAP. This was done to secure a Japanese-produced plan in preference to one imposed upon the Government by GHQ.

3. In September 1946, the Japanese Government submitted an informal draft plan in order to "see if [they were] moving in the right direction." It was suggested that, although the plan included a number of corporations as being subject to screening, it should make this list specific by including by name all organizations within the proposed criteria.

4. On October 22, 1946 the Japanese Government submitted a more comprehensive plan. The plan provided for the screening of all officials, including ordinary directors, auditors, advisers and councillors, and any other officials regardless of title or position who in fact exercised authority or influence commensurate with any of the officials named, in 397 companies listed by name and in 52 organizations established by special legislation, of which 28 were economic in nature. More specifically these included:

a. Companies which have excessively concentrated economic power including influential private companies of large economic scale, to include:

(1) Companies which have capitalization exceeding one hundred million yen or those corresponding to the above.

(2) Companies to be designated by the Prime Minister as those which have excessively concentrated economic power.

b. Influential private financial institutions.

c. Control associations, control companies, control unions or other organizations to be designated under the provisions of the temporary supply and demand adjustment law.

d. Organizations established under special legislation, organizations subsidized by the Government or those corresponding to the above, which have the nature of serving for public benefit and command wide national influence.

5. The plan also provided that persons who held, between July 7, 1937, and September 2, 1945, controlling influence in any of the following companies, would be defined as falling under the provisions of paragraph G of the purge directive.

a. Conspicuously influential companies which have manufactured finished aircraft, arms, or munitions.

b. Conspicuously monopolistic companies which have engaged in production of essential productive materials or business of communication or transportation.

c. Conspicuously monopolistic companies which have engaged in domestic or international trade.

d. Holding companies to be designated by SCAP memorandum and influential companies closely associated with the above.

e. Any other private companies and financial institutions which have carried out conspicuously monopolistic practices in business.

Persons who held controlling influence in

the above companies were defined as including the following principal officials in 89 listed companies considered as major

a. Chairman, vice chairman

b President, vice president.

c. Special managing director, managing director.

d. Standing auditor.

e Active advisors or councillors

f Principal stockholders who owned 20 percent or more of the capital stocks or who exercised controlling influence in the company

In the case of 174 other listed companies, only the chairman and president were defined as persons who held controlling influence

6. After careful consideration of the plan and coordination with other interested staff sections of GHQ, a memorandum was sent by the Chief, Government Section, to the president, Central Liaison Office This memorandum stated, "In general the policies incorporated in the Plan are in keeping with the spirit of the purge directive (SCAPIN 550)," and enumerated necessary modifications and commented briefly thereon, as follows

"Organizations which represented excessive concen- [illegible]

000,000 or more capitalization may be incorporated to achieve this.

[illegible]

persons are to be removed or excluded should be more clearly defined Since two types of action are contemplated, i e , removal and exclusion, two categories of persons should be established Principal officials, if found undesirable, should be removed, important secondary officials, excluded

"The treatment of persons who held positions of high responsibility or controlling influence in companies defined as excessive concentrations of economic power should be uniform If a company were of sufficient importance to be listed, then all the policy-making officials [illegible]

or indirectly should be added to the list of such persons as well as persons, regardless of position or title, who exercised authority or influence commensurate with the above "

7 As a result of this memorandum and subsequent informal conferences with representatives of the Japanese Government, a revised plan was submitted for SCAP approval on November 21, 1946 This plan specified those positions from which persons undesirable within the purview of the directive would be removed and the lesser positions from which such persons would be excluded in

a 30 listed national policy companies, corporations, special banks, etc

b 60 organizations to be designated by the temporary demand and supply adjustment law.

c 54 organizations established under special legislation, government subsidized organizations, etc , of which 28 were economic in nature

d 238 companies which were deemed to be excessive concentrations of economic power so influential in the economic life and on the government of Japan that policy-making positions in them must be construed as public service

During the next month minor refinements were made in the plan on the basis of further research and reports companies were deleted from or added to the outlined categories, others were transferred from the screenable to the purgeable group of organizations and vice versa Close coordination with ESS was effected during this period, and the recommendations of that Section were very valuable to the Japanese Government and to Government Section in determining the treatment to be afforded specific companies In some cases Government Section, on the basis of available information, made recommendations to officials of the Government. The Government accepted many of these recommendations and, in cases in which there was question as to fact, research was continued until differences could be settled informally in conference

8. An important provision of the plan de-

signed to prevent continuity of undesirable influence was the so-called family article. This provided that a relative within the third degree by blood, marriage, or adoption was barred from succeeding to an appointive position from which a member of his family was removed. The purpose and necessity for this article was discussed at some length in a letter from General MacArthur to Prime Minister Yoshida on December 26, 1946.[24]

V. The 1947 Purge Ordinances and Their Implementation

1. On January 4, 1947, the Japanese Government promulgated ordinances which included the legal provisions for implementing the economic purge.[25] Positions in the economic field specified as screenable were divided into two groups:

a. Those defined as principal public office include the chairman, vice chairman, president, vice president, director, standing auditor and any other official, regardless of title, who in fact exercised authority or influence commensurate with any of the above. These, if found undesirable within the purview of the ordinances were to be removed from office and excluded from all public service.

b. Those defined as ordinary public office include the auditor, advisor, councillor, head of the business or accounting department, and any other official with commensurate authority or influence. Those found undesirable under the ordinances, were to be barred from public service but not necessarily removed from such positions.

c. The companies and other economic organizations whose officers were to be screened were listed in the following categories:

(1) 26 special companies, corporations, special banks and other companies in which the Government had the largest or controlling interest.

(2) Companies to be designated by the temporary supply and demand adjustment law. These were not specifically named because this law had not yet been passed. As companies were subsequently named they were screened.

(3) 78 organizations established under special legislation or subsidized by the Government, and other organizations serving for the public benefit. Of these 53 were primarily economic in nature.

(4) 278 influential private companies, financial institutions, and other economic organizations. Of these, 85 were located outside of Japan and many were no longer in existence.

d. An integral part of the ordinances was the Japanese Government's "interpretation of Category G," later incorporated as remarks attached to paragraph 7, appendix I, Cabinet and Home Affairs Ministry Ordinance No. 1 of 1947. In addition to certain broad general provisions aimed at preventing evasion of the purge by individuals who held high positions in certain economic fields and about whom there was "conspicuous evidence" as persons falling under the general provisions of this broad category, it provided for the purge of the officials who held between July 7, 1937, and September 2, 1945, any of the following positions in any of the 246 listed companies of the 278 referred to above:

(1) President, vice president.
(2) Chairman, vice chairman.
(3) Managing director, standing director.
(4) Standing auditor.
(5) Active adviser or councillor.
(6) Principal stockholder who owned 10 percent or more of capital stocks or who exercised, directly or indirectly, controlling

[24]Appendix B: 5h, General MacArthur's letter to Prime Minister Yoshida, December 26, 1946, concerning extension of purge.

[25]Appendix B: 5i; j; and k.

influence in the management of the company

(7) Any other official, regardless of his title, including branch managers in any Japanese-occupied territory, Axis or Axis-occupied country, who in fact exercised authority or influence commensurate with any of the positions listed above.

2. The actual screening of an estimated 3,200 persons holding positions in these organizations was scheduled to start in the latter part of March In allowing this period consideration was given to the fact that most organizations and companies would require a reasonable time to make necessary readjustments in their organic structure

3 During the interim between the promulgation of the ordinances and the actual screening of economic companies and organizations, which was not started until the middle of April 1947, there were several interesting developments

Some officials who knew that they fell within the purview of the purge provisions resigned; a few had resigned prior to January 4, 1947, as a result of the publication in October 1946 of the plan to extend the purge to economic fields A subsequent survey of such persons revealed that they numbered about 450 In this period there was no discernible effect on economic activities in Japan, since the details had been carefully evolved so as not to disturb the managerial and technical persons whose skill and brains were directed to business problems and not to the formulation of policy which brought Japan to aggressive war

Before there had been an opportunity to observe the effects of the program, but immediately after the promulgation of the ordinance, it received severe criticism from certain circles The charge was made that the removal of leading figures in industry, finance and commerce would disrupt economic recovery. One of the most violent of these criticisms appeared in the January 27, 1947, issue of *Newsweek Magazine* This was answered in a release by the Supreme Commander in which he referred to the basic directives evolving from announced United States Policy and the nature of the individuals affected [26]

4 Subsequent observation revealed that the effect of the purge in economic circles did not weaken the economy of Japan During the latter part of July and the first part of August 1947, requests of purgeable key officials for temporary retention in office were received from a number of companies on the premise that these individuals were indispensable to the continued operation of their respective companies Of these requests 12 were disapproved and 9 were approved On November 4, 1947 the Japanese Government submitted statistical reports on these companies, which contained production figures for the three months prior to the dismissal of the affected officials and the three months after dismissal, plus background material on the purgee's replacement The reports revealed that in these 12 companies, which represented a cross section of Japanese industry, steel, rayon, electric, cotton spinning, pulp, chemical, heavy manufacturing and cement, seven had substantial increases in production, three held produttion levels with minor balancing gains and losses, and only two, the cement companies, which depended heavily on coal allocations, had slightly decreased production This was all in spite of the severely short allocations of basic raw materials In most cases the replacements for removed personnel were technically capable persons who had long careers in their specific fields

5 In the screening of candidates for the April elections numerous cases were encountered in which an individual's past career brought him within the purview of the purge provisions applying to those in economic and

[26] Appendix B 51, General MacArthur's comment on *Newsweek* article entitled "Behind the Purge—American Military Rivalry," published January 27, 1947.

signed to prevent continuity of undesirable influence was the so-called family article. This provided that a relative within the third degree by blood, marriage, or adoption was barred from succeeding to an appointive position from which a member of his family was removed. The purpose and necessity for this article was discussed at some length in a letter from General MacArthur to Prime Minister Yoshida on December 26, 1946.[24]

V. The 1947 Purge Ordinances and Their Implementation

1. On January 4, 1947, the Japanese Government promulgated ordinances which included the legal provisions for implementing the economic purge.[25] Positions in the economic field specified as screenable were divided into two groups:

a. Those defined as principal public office include the chairman, vice chairman, president, vice president, director, standing auditor and any other official, regardless of title, who in fact exercised authority or influence commensurate with any of the above. These, if found undesirable within the purview of the ordinances were to be removed from office and excluded from all public service.

b. Those defined as ordinary public office include the auditor, advisor, councillor, head of the business or accounting department, and any other official with commensurate authority or influence. Those found undesirable under the ordinances, were to be barred from public service but not necessarily removed from such positions.

c. The companies and other economic organizations whose officers were to be screened were listed in the following categories:

(1) 26 special companies, corporations, special banks and other companies in which the Government had the largest or controlling interest.

(2) Companies to be designated by the temporary supply and demand adjustment law. These were not specifically named because this law had not yet been passed. As companies were subsequently named they were screened.

(3) 78 organizations established under special legislation or subsidized by the Government, and other organizations serving for the public benefit. Of these 53 were primarily economic in nature.

(4) 278 influential private companies, financial institutions, and other economic organizations. Of these, 85 were located outside of Japan and many were no longer in existence.

d. An integral part of the ordinances was the Japanese Government's "interpretation of Category G," later incorporated as remarks attached to paragraph 7, appendix I, Cabinet and Home Affairs Ministry Ordinance No. 1 of 1947. In addition to certain broad general provisions aimed at preventing evasion of the purge by individuals who held high positions in certain economic fields and about whom there was "conspicuous evidence" as persons falling under the general provisions of this broad category, it provided for the purge of the officials who held between July 7, 1937, and September 2, 1945, any of the following positions in any of the 246 listed companies of the 278 referred to above:

(1) President, vice president.

(2) Chairman, vice chairman.

(3) Managing director, standing director.

(4) Standing auditor.

(5) Active adviser or councillor.

(6) Principal stockholder who owned 10 percent or more of capital stocks or who exercised, directly or indirectly, controlling

[24]Appendix B: 5h, General MacArthur's letter to Prime Minister Yoshida, December 26, 1946, concerning extension of purge.

[25]Appendix B: 5i; j; and k.

influence in the management of the company.

(7) Any other official, regardless of his title, including branch managers in any Japanese-occupied territory, Axis or Axis-occupied country, who in fact exercised authority or influence commensurate with any of the positions listed above.

2. The actual screening of an estimated 3,200 persons holding positions in these organizations was scheduled to start in the latter part of March. In allowing this period consideration was given to the fact that most organizations and companies would require a reasonable time to make necessary readjustments in their internal structure.

3. During the interim between the promulgation of the ordinance and the actual screening of economic companies and organizations, which was not started until the middle of April 1947, there were several interesting developments.

Some officials who knew that they fell within the purview of the purge provisions resigned; a few had resigned prior to January 4, 1947, as a result of the publication in October 1946 of the plan to extend the purge to economic fields. A subsequent survey of such persons revealed that they numbered about 450. In this period there was no discernible effect on economic activities in Japan, since the details had been carefully worked out so as not to disturb the managerial and technical persons whose skill and talents were devoted to business problems and not to the formulation of policy which committed Japan to aggressive war.

Before there had been an opportunity to observe the effects of the program, but immediately after the promulgation of the ordinance, it received severe criticism from certain circles. The charge was made that the removal of leaders from Japanese industry, finance and commerce would hinder economic recovery. One of the most virulent of these criticisms appeared in the January 27, 1947, issue of *Newsweek Magazine*. This was answered in a release by the Supreme Commander in which he referred to the basic directives evolving from announced United States Policy and the nature of the individuals affected.[illegible]

4. Subsequent observation revealed that the effect of the purge in economic circles did not weaken the economy of Japan. During the latter part of July and the first part of August 1947, requests of purgeable key officials for temporary retention in office were received from a number of companies on the premise that these individuals were indispensable to the continued operation of their respective companies. Of these requests 22 were disapproved and 5 were approved. On November 4, 1947 the Japanese Government submitted statistical reports on these companies, which contained production figures for the three months prior to the removal of the affected officials and the three months after removal, plus background material on the purgee's replacement. The reports revealed that of these 22 companies, which represented a cross section of Japanese industry (steel, rayon, electric, cotton spinning, pulp, chemical, heavy manufacturing and cement), seven had substantial increases in production, three had production levels with minor stationary gains and losses, and only two, the cement companies, which depended heavily on coal allocations, had slightly decreased production. This was all in spite of the severely short allocations of basic raw materials. In most cases the replacements for removed personnel were technically capable persons who had long careers in their specific fields.

5. In the screening of candidates for the April elections numerous cases were encountered in which an individual's past career brought him within the purview of the purge provisions applying to those in economic and

[illegible] January 27, 1947.

financial institutions. Among these cases were several which brought to light that the purely technical application of certain provisions might lead to a number of individual injustices. As such instances arose, interpretations of specific provisions were established. Prior to the screening of the economic organizations in April 1947 the following interpretation problems arose:

a. In January 1947, the Economic and Scientific Section proposed that the provision of the interpretation of Category G which provided for the automatic inclusion of 14 "holding companies designated or to be designated hereafter by SCAP and influential companies closely associated with the above," be modified so that all holding companies so designated need not automatically be added, but might be if it were deemed necessary. This suggestion was adopted.

b. In March 1947, the same SCAP section recommended that six securities companies be transferred from the list of concerns affected by the interpretation of Category G to the list of companies which were screenable only. Of these companies, only two had strong Zaibatsu connections and were of decisive influence. Accordingly, transfer of four companies was approved.

c. The term "per pro manager" appeared in a number of questionnaires. The Japanese Government submitted a report which showed that there were often a number of these managers in one branch and that they were subordinate to the branch managers. Accordingly, the proposal of the Government that such persons not be considered subject to purge for this reason alone was approved.

d. In March the difficulty of applying the purge provisions to "principal stockholders holding 10 percent or more of capital stock" became apparent. Information obtained revealed that in many instances such stock was held merely as investment and that the large stockholders were, for the most part, banks, insurance companies, or holding companies. Initially, this provision was proposed to be restated as "controlling interest held; or more than 50 percent stock." Subsequently, in July 1947, research led to the realization that large individual stockholders who exercised policy control in every instance held policy offices subject to purge scrutiny.

e. In April a branch manager of the Peking branch of an influential company was considered by the central screening committee to have held a position of insufficient importance to warrant designation, although a purely technical interpretation would have resulted in his purge. Concurrently the interpretation of "territory occupied by the Japanese armed forces" as it affected a branch manager in Formosa was questioned. Individually these cases were not of great importance, but they did open for discussion the entire question of branch managers. Statistics were secured on all the branches of listed companies, the authority vested in the managers of various branches was determined and, after several months during which time ESS was consulted extensively and discussions were held with officials of the Government, the following interpretations were approved:

(1) With regard to the branch managers of financial and development organizations involved in Japanese expansion, "manager of a branch" will be construed as manager of the sole or controlling branch in 21 listed occupied or colonial territories.

(2) For branch managers of "influential private companies, or other financial organizations" the problem was more complex. No application of this provision was made until the interpretation was evolved in November 1947 that those will be considered who were head of production branches with more than 30 percent of over-all company production or branches with more than 20 percent of total business of trading concerns or financial institutions; and these will not be considered to fall under the purge if they could show that they did not recommend policy or policy matters,

that they were under the direct supervision of a managing or standing director, or if there is evidence to indicate that such manager had authority considerably less than a standing director.

f. In March, Civil Communications Section recommended the addition of two communications companies to the list of "influential private companies," subject to the provisions of the interpretation of Category G In April, after necessary coordination with the Economic and Scientific Section, this addition was approved, and in May the Government added these companies to the list

g. In April the screening of economic organizations began To insure that all officers of the listed companies and economic organizations were screened, Government Section obtained lists of these officials By the middle of May 1947, 156 companies had been screened by the Government and the action taken on 102 of these had been reviewed by SCAP (Government Section) By the middle of July 1947 this phase of the program had progressed almost to completion 3,150 persons in policy positions in the Japanese economic world had been screened and their cases reviewed by SCAP; 292 persons had been removed or barred from public office Included in this total were a number of persons screened not because of their positions in economic circles but because they were incumbents or candidates for other public office There remained only the screening of those persons whose questionnaires, for various reasons, had not yet been obtained and the seeking out of those whose positions were not specifically listed in the purge provisions of the implementing ordinances but who had, nevertheless, exercised authority and influence commensurate with such listed positions

The remaining screening task involved the application of two interpretations the evolution of which is described briefly as follows.

(1) A study of the lists of officials of all screenable organizations which were also subject to the provisions of the interpretation of Category G and the review of numerous cases revealed that there were many companies which had no standing auditors. This became apparent in the latter part of April 1947. It was apparent, too, that in at least a number of these instances, one or more of the ordinary auditors had held authority or influence commensurate with that of standing auditor. A study was made of the corporate structure of Japanese business organizations in coordination with the Economic and Scientific Section and officials of the government As a result, the interpretation with regard to auditors was resolved and announced This was that persons who were auditors in listed companies during the critical period would be required to show that their activities were not commensurate with those of standing auditors

(2) In a similar manner it was discovered that a number of the listed companies had no designated managing or standing directors It was to be presumed, however, that some ordinary director in each company must have exercised authority or influence commensurate with that of a managing or standing director Research substantiated this and after necessary coordination the Japanese Government ruled that in the absence of proof to the contrary, directors of companies with no managing or standing directors would be considered, unless they could show proof to the contrary, to have exercised authority or influence commensurate therewith if they met any of the following criteria

(a) A director who was concurrently in charge of general affairs or business department, or who was a "representative director"

(b) Director who was concurrently an officer (president, vice president, managing or standing director, or standing auditor) of a subsidiary or affiliate

(c) A director of the company who had longer affiliation and greater salary than other directors

(d) A director who was a full-time director and was charged with the responsibility for

any (major) part of the company's operations.

(c) A director who owned over 1 percent of the stock of the organization or related organizations and took an active part in the determination of the company's policies.

At first glance it appears that this ruling was severe, but the manner in which it was applied made it not so. The criteria furnished the basis for individually examining each case and requiring necessary explanatory information. On the basis of this information a special economic subcommittee of the central screening committee made its recommendations. Similar procedure was followed in the cases of the auditors.

h. By October 1947 the screening of incumbent officials of economic organizations was substantitally completed. A total of 3,488 persons had been screened in 300 companies and associations; a total of 350 persons had been barred or removed from public service by economic criteria. Some screening continued, however, and final results of screening were:

Organizations for which screened	Number screened	Removed or barred
Special companies, corporations, special banks, and other companies in which the Government or above organizations is the largest stockholder	2,855	99
Companies or other organizations to be designated by the Temporary Supply and Demand Adjustment Law (Control Cos.)	843	41
Organizations established under special legislation, organizations subsidized by the Government, and other organizations serving for the public benefit, corresponding to the above	911	60
Influential companies, financial institutions, and other economic organizations (subject to provisions of Interpretation of Category "G")	1,906	405
Other influential companies, financial institutions, etc. (screenable only)	436	21
Total	6,951	626

These figures include the newly appointed officials of these organizations as well as those who were incumbents, but do not include individuals subsequently released on the basis of appeal. Of 78 organizations established under special legislation, only 53 were primarily economic in nature. The total number of 626 shown as removed or barred includes those designated under all categories.

Of a total of approximately 700,000 persons screened for all public service the following were removed or barred under economic categories as indicated:

Category of purge provision	Removed or barred
Officers of financial and development organizations involved in Japanese expansion	42
Officers of influential companies, financial institutions and other economic organizations (subject to the Interpretation of Category "G")	626
Total	668

VI. Provisional Designation

1. As screening progressed it became apparent that the intent of the purge directive was evaded by persons who had resigned from office to avoid examination. The injunctions against continuity of influence, and provisions for enforcement of these very necessary injunctions, applied only to designees of the screening committees. To block this legal loophole it was necessary to designate by name all persons categorically subject to the purge.

2. Accordingly, on July 2, 1947, the Japanese Government promulgated legislation which provided that "the Prime Minister may, regarding persons whom he deems, based upon sufficient evidence, as coming within the purview of the memorandum (the purge directive), effect provisional designation in accordance with the decision of the central public office qualifications examination committee, as falling under the memorandum without collecting questionnaire." Persons so designated were allowed a 30-day period during

which they could submit letters of exception accompanied by questionnaire, if such letters were submitted their cases were individually screened in the usual manner If no letters of exception were submitted the individuals concerned were finally designated at the end of the 30-day period

3 By this time data were already available on each of the economic organizations whose former officers were affected by this phase of the over-all economic purge program During the month of July 1947 information received from ESS on former officers of these companies, etc , was checked against Japanese Government lists By August a list of former officers of affected organizations was compiled on the basis of documentary evidence from three sources, information furnished by the Economic and Scientific Section, the organizations' records and the Japanese Government This list was the basis for the first accurate estimates of the number of provisional designees in those categories applicable to economic posts It was estimated that

1,186 persons would be provisionally designated summarily
188 persons would be provisionally designated upon determination of their addresses
*635 persons would be individually investigated prior to any action being taken in their case
220 persons were deceased and would naturally not be designated
334 persons listed had already been designated as purgees for one reason or another

4 Economic provisional designation began in September 1947 and continued during the succeeding month By the middle of October the Government reported that the provisional designation of "latent economic purgees" had been completed except for a very few directors, auditors and branch managers The legislation affecting branch managers was not enacted until October 13, 1947, however, preliminary individual examination by the Government had been conducted on the basis of the criteria already crystalized. These groups were completed by January 1948, with the following results·

a. Directors of companies having no managing or standing director·

(1) 96 were considered as clearly purgeable.

(2) 15 of these were deceased

(3) 20 had been previously designated as purgees

(4) 61 were provisionally designated

b Auditors of companies having no standing auditor

(1) 321 were considered as clearly purgeable

(2) 59 had been previously designated

(3) 30 of these were deceased

(4) 202 were provisionally designated

c Branch managers of financial and development organizations involved in Japanese expansion· 82 were considered as clearly purgeable and were provisionally designated

d Branch managers of influential companies, financial institutions and other organizations falling under the interpretation of Category G

(1) 41 were considered as purgeable.

(2) 4 of these were deceased

(3) 30 had been previously designated as purgees

(4) 1 was not yet repatriated and accordingly not designated

(5) 6 were provisionally designated

5. Subsequent to the announcement of provisional designation of individuals, a number of letters of exception were received These set forth reasons for subject's belief that he was not subject to the purge and in some instances supplied documentary evidence to that effect By the latter part of November 1947, 110 such letters had been submitted to the Japanese Government; 60 had been rejected, 16 approved, and 34 were in the process of examination

Completion of the final designation in the economic field revealed the following totals:

*This group included ordinary directors and auditors of organizations which had no managing or standing directors or standing auditors, and also included branch managers

Provisionally designated in all positions:		
Involved in Japanese Expansion	401	
Companies under Interpretation of Category "G"	936	
	——	1,337
Letters of exception and appeals:		
Number received	120	
Number rejected or disapproved	88	
Number released from designation by letter of exception	32	
Number released by appeal board	7	
Total number finally designated	—	39
		1,298

VII. Summary and Effect of Over-all Economic Purge Program

1. During the administration of the economic phase of the purge numerous miscellaneous matters were considered, some of which, though of relatively small importance in themselves, fill in and round out the program and are worthy of mention for that reason.

a. A number of requests for temporary retention in office of purged officials of economic organizations were received. In those cases which showed conclusively that the individual was indispensable to the company because of his technical ability and that, in spite of efforts to secure the services of some other qualified person, the subject official was irreplaceable, such retention was granted for the period of necessity. Cases of this nature were coordinated with Economic and Scientific Section personnel familiar with the current status of such organizations, in order to insure that the administration of purge did not seriously delay economic recovery. Temporary retentions were granted for nine such persons during 1947.

b. The Japanese Government removed several companies from the list of organizations whose wartime (1937–45) officials were subject to the purge. Additional information concerning activity and connection with large holding companies was learned mainly through appeals submitted by companies and their removal had the approval of Government Section and Economic and Scientific Section, reflecting that initially established criteria were not stubbornly maintained when subversive to just and fair action.

c. Newly formed companies of importance were examined to determine whether the interests of the public demanded screening of their officers. No new private companies proved to be of such public interest. Kodans or government control associations, however, were added automatically by the Government, an example of the Japanese Government's initiative in applying the provisions of the purge. Further, the Japanese Government promulgated on February 9, 1948, legislation which made it illegal for a purgee to become an officer in a direct successor organization to one named in the ordinance. Several persons designated because of positions which they held between 1937 and 1945 in Japan's wartime economy appealed their cases and were subsequently reinstated. These persons generally showed that, although they held positions which normally would have been considered controlling influence, these positions were held solely because of their highly specialized technical ability and that, in fact, they did not have or exercise policy control.

2. The following statistics show the extent of the economic phase of the purge program:

a. Over-all economic field—including quasi-governmental:

(1) Number of persons screened as hold[illegible] 6,951

(2) Number of the above persons actually removed from office (including those removed for falling under purge provisions other than economic) 453

(3) Number of persons barred, removed or excluded from any public office by reason of the economic purge (including those in financial institutions involved in Japanese expansion) 1,924

b. Private economic organizations:

(1) Number of persons screened as holding or being considered for appointment to important positions in private organizations 2,342

(2) Number of above persons actually removed from office in private economic organizations (including those removed by purge provisions other than economic) 254

(3) Number of persons screened and barred or removed from any public office by reason of the economic purge (including those involved in Japanese expansion) [27]465

[27]For a detailed statistical analysis of the effect of the Economic Purge, see Appendix B 50, General Summary of Purge Statistics

Provisionally designated in all positions:		
Involved in Japanese Expansion	401	
Companies under Interpretation of Category "G"	936	
	——	1,337
Letters of exception and appeals:		
Number received	120	
Number rejected or disapproved	88	
Number released from designation by letter of exception	32	
Number released by appeal board	7	
Total number finally designated	—	39
		1,298

VII. Summary and Effect of Over-all Economic Purge Program

1. During the administration of the economic phase of the purge numerous miscellaneous matters were considered, some of which, though of relatively small importance in themselves, fill in and round out the program and are worthy of mention for that reason.

a. A number of requests for temporary retention in office of purged officials of economic organizations were received. In those cases which showed conclusively that the individual was indispensable to the company because of his technical ability and that, in spite of efforts to secure the services of some other qualified person, the subject official was irreplaceable, such retention was granted for the period of necessity. Cases of this nature were coordinated with Economic and Scientific Section personnel familiar with the current status of such organizations, in order to insure that the administration of purge did not seriously delay economic recovery. Temporary retentions were granted for nine such persons during 1947.

b. The Japanese Government removed several companies from the list of organizations whose wartime (1937–45) officials were subject to the purge. Additional information concerning activity and connection with large holding companies was learned mainly through appeals submitted by companies and their removal had the approval of Government Section and Economic and Scientific Section, reflecting that initially established criteria were not stubbornly maintained when subversive to just and fair action.

c. Newly formed companies of importance were examined to determine whether the interests of the public demanded screening of their officers. No new private companies proved to be of such public interest. Kodans or government control associations, however, were added automatically by the Government, an example of the Japanese Government's initiative in applying the provisions of the purge. Further, the Japanese Government promulgated on February 9, 1948, legislation which made it illegal for a purgee to become an officer in a direct successor organization to one named in the ordinance. Several persons designated because of positions which they held between 1937 and 1945 in Japan's wartime economy appealed their cases and were subsequently reinstated. These persons generally showed that, although they held positions which normally would have been considered controlling influence, these positions were held solely because of their highly specialized technical ability and that, in fact, they did not have or exercise policy control.

2. The following statistics show the extent of the economic phase of the purge program:

a. Over-all economic field—including quasi-governmental:

(1) Number of persons screened as holding or being considered for appointment to important positions in economic organizations (including 25 organizations estab- 6,951

(2) N 453

(3) Number of persons barred, removed or excluded from any public office by reason of the economic purge (including those in financial institutions involved in Japanese expansion) 1,924

b. Private economic organizations:

(1) Number of persons screened as holding or being considered for appointment to important positions in private organizations 2,342

(2) Number of above persons actually removed from office in private economic organizations (including those removed by purge provisions other than economic) 254

(3) Number of persons screened and barred or removed from any public office by reason of the economic purge (including those involved in Japanese expansion) [27]465

[27]For a detailed statistical analysis of the effect of the Economic Purge, see Appendix B 50, General Summary of Purge Statistics

Part III. The Public Information Media Phase

I. Background

1. Policy Directives

The public information media phase of the removal and exclusion program was dictated by the words of the Potsdam Declaration which stated that "there must be eliminated for all time the authority and influence of those who have deceived and misled the people of Japan into embarking on world conquest. . . ." The fulfillment of this provision of the Potsdam Declaration required elimination from leadership of those who by writing and speech had shown themselves to be active exponents of militant nationalism and of those who, by control of the press, radio and the motion picture propagandized the Japanese people until they became willing to support a war of aggression. Consonant with the Potsdam Declaration and the initial United States Post-Surrender Policy for Japan, the Supreme Commander in the latter part of August 1945 was directed by the Joint Chiefs of Staff to insure that no persons be "allowed to hold public office or any other positions of responsibility or influence in public or important private enterprise who have been active exponents of militant nationalism and aggression."

2. Voluntary Purge of the Press

Informed Japanese newspaper men, who for almost a decade had been forced to remain silent while they watched the nation moving ever nearer to disaster, were quick to realize that those who controlled the press during this period bore a heavy responsibility for the war and its resultant ruin. Shortly after the restrictions on freedom of speech and of the press had been lifted by SCAP directive, a spontaneous movement aimed at eliminating the old autocratic leadership took place in the newspaper industry.

The *Asahi Shimbun*, Japan's largest and perhaps most influential newspaper, was the first to accomplish its program of reorganization. On October 21, 1945, policy-making officers down to bureau chiefs resigned their positions en masse. On November 26, 1945, the management of the *Mainichi Shimbun* bowed to a similar demand from the paper's staff. Matsutaro Shoriki, president of *Yomiuri Shimbun*, third largest newspaper in Japan, stubbornly resisted the newspaper guild's demand for "democratization of the press," received on October 23, 1945. This caused a prolonged labor dispute. Shoriki's apprehension as a war criminal suspect in early December 1945, however, abruptly settled the issue in favor of the guild members, and top officials on the *Yomiuri* resigned from their positions on December 11, 1945.

These and other such incidents in various information media companies were indicative of the fact that a certain section of the Japanese people had come to realize that those who had propagandized the nation into war and conquest were not qualified to serve as heralds of peace or spokesmen for democracy.

II. Preliminary Steps

1 SCAPIN 550

The Public Information Media Purge was based upon Category G, SCAPIN 550, the broad provisions of which ordered the removal and exclusion of all ultranationalists and militarists not specified under any other categories of the directive [28] The Japanese Government's announcement of March 10, 1946, interpreted this category as including writers and artists, owners of publishing enterprises, publishers or editors of any newspaper, magazine or other form of publication who had engaged in activities proscribed by Category G of the directive

On May 16 the Japanese Government further defined the provisions of Category G applying to writers and publishers, and in so doing laid the ground work for the purge of the field of public information which was completed the following year.

2 CI&E Memorandum

On May 17, 1946, Brig Gen Kenneth Dyke, Chief of Civil Information and Education Section, submitted a memorandum to the Chief of Staff recommending that a directive be issued to the Japanese Government ordering removal and exclusion of undesirable personnel from positions of authority and influence in Japanese media of public information

This memorandum pointed out that "control of Japanese information media by individuals opposed to the aims of the Potsdam Declaration would place in their hands a powerful social instrument which could be utilized at some future date to subvert the aims of the Occupation and mold the minds of the people for new wars of aggression SCAP has already taken steps to eliminate active exponents of militant nationalism and aggression from the educational system, public office and the political life of Japan Fulfillment of the Potsdam Declaration requires that such individuals also be eliminated from positions of authority and influence in the information field It is the opinion of CI&E that until this is accomplished, it will be impossible to create free, vigorous and independent information media "It was further pointed out that under existing SCAP directives, it was still possible for individuals who were barred from public office and the educational system to occupy positions of equal or greater authority and influence in information media

CI&E recommended that the term public information media be defined to include (a) newspapers and news agencies, (b) radio broadcasting, (c) magazines and books, (d) motion pictures and (e) theaters The memorandum listed those positions of authority and influence in public information media concerns from which undesirable personnel must be removed and excluded Such positions included: President, managing director, partner, adviser, member of the board of directors, executive editor or producer, and controlling stockholders.

Although the public information media purge was to be implemented under the provisions of Category G, SCAPIN 550, instead of by a separate directive, many of the recommendations made by CI&E were incorporated in the final public information media program.

III. Implementation

SCAPIN 550 was first implemented under Imperial Ordinance 109 of 1946 which applied only to government officials of Chokunin rank or higher and to a limited number of officials in listed organizations. In November 1946, however, the Government formulated a plan

[28] Appendix B 5b, SCAPIN 550, January 4, 1946.

for the extension of the purge not only to local government levels but to certain private industries as well. Among these the Government listed principal newspaper companies, news agencies, broadcasting corporations and other media of mass communication. This extension became law on January 4, 1947, with the promulgation of the new purge ordinances which specified in detail the persons to be screened and the screening procedure.[29]

1. Criteria for Screening

Cabinet and Home Ministry Ordinance No. 1 of 1947 defined the term "public service" as including positions of policy-making level in the various media of public information. Article II of the Imperial Ordinance No. 1 stated: "The term, public service, as used in this ordinance shall mean and include positions of members of National Diet, personnel of the National Government entity, assembly members and personnel of local public organizations and positions of specific personnel of specific companies, associations, *mass communication media* and other organizations . . . ."

Positions and organizations to be screened were specifically listed. Positions were classified as principal public office and ordinary public office. Chairman, vice chairman, president, vice president, director, standing auditor, chief of compilation bureau, editor in chief, chief of research bureau, managing editor, chief of editorial staff, news editor, and other commensurate positions were classified as principal public officers. Auditor other than standing auditor, adviser, councilor, departmental chief of compilation bureau and other such officials of comparable level were defined as ordinary public officers. Both were required to be screened; however, no person was held subject to the purge for activity in an ordinary public office. Thirty-six newspaper companies, 20 book and magazine publishers, 5 motion-picture companies and 1 radio corporation were listed. Companies and organizations to be screened were not limited to those listed in the ordinance, as provisions were made that all newspaper companiés of 20,000 or more circulation, and all other information media organizations of comparable influence were to be screened.

2. Criteria for Removal and Exclusion

The Japanese Government's interpretation of Category G, included as a substantive part of Cabinet and Home Ministry Ordinance No. 1, was amplified to supply the criteria for the public information media purge.

a. *Criteria Applied to Propagandists.* Its provisions brought under the ordinance any person "who in the capacity as scholar, journalist, member of a newspaper editorial staff, reviewer or writer for magazine or other publications, or in any other similar capacity," had through writing or speech identified himself as a person who—

(1) Advocated aggression or militant nationalism, or actively contributed to such propaganda, or who through his political or philosophic doctrine laid down an ideological basis for the policies for the Greater East Asia, New Order in the East Asia or policies of similar nature, or the Manchurian Incident, China Incident, or the Pacific War.

(2) Advocated dictatorship or totalitarianism of the Nazi or Fascist pattern.

(3) Advocated the supremacy of the Japanese nation to be a leader of other nations or who cooperated actively with propaganda of the above effect.

(4) Persecuted or denounced liberals or persons espousing antimilitaristic ideologies.

(5) In any other way advocated or championed militarism or ultranationalism.

b. *Criteria Applied to Responsible Officials.* The interpretation of Category G also provided that persons who held policy level positions between July 7, 1937, and December 7,

[29]Appendix B: 5i; j; k: Imperial Ordinances Nos. 1, 2, of 1947, and Cabinet and Home Ministry Ordinance No. 1 of 1947.

1941, in information media companies and who engaged in the activities listed above or in other proscribed activities listed under paragraph 1 of SCAPIN 548 were to be removed and excluded. The provisions of SCAPIN 548 apply to persons who advocated—

(1) Resistance or opposition to the Occupation Forces or to orders issued by the Japanese Government in response to directives of the Supreme Commander for the Allied Powers; or

(2) Support or [illegible] of aggressive Japanese military action abroad; or

(3) Acceptance by Japan of leadership of other Asiatic, Indonesian or Malayan peoples; or,

(4) Exclusion of foreign persons or Japan from trade, commerce or the exercise of their professions; or

(5) Opposition to a free cultural or intellectual exchange between Japan and foreign countries; or,

(6) [illegible] training [illegible] or Navy [illegible] Japan; or

(7) [illegible]

[illegible]

3. [illegible]

[illegible]

lic information media companies must be removed from public information work of any kind. It further stipulated that any individual who was purged for any other reason would be permitted to hold "any position in an [illegible] staff or other capacity" in any unit of mass communication.

In defining the critical period as the years from the outbreak of the China [illegible] in 1937 to the attack on Pearl Harbor in 1941 [illegible]

It [illegible]

4. Information [illegible]

[illegible]

a. *Membership of the Committees.* Since during the critical period there were in existence approximately 850 newspaper companies and 4,500 book and magazine publishers, the task was a formidable one. It was undertaken by the Japanese Government in February 1947 with the establishment of an Information Media Investigation Committee, consisting of—

(1) Shikao Matsushima, a career diplomat who was then chairman of the Central Screening Committee.

(2) Tatsuo Iwabuchi, journalist and political commentator, who was also a member of the Central Screening Committee.

(3) Masuo Kato, former correspondent for the Domei News Agency in the United States.

(4) Takeshi Ohta, Chief of Secretariat of the Central Screening Committee.

(5) Hisanari Yamada, Chief of Political Affairs Bureau of the Central Liaison Office.

(6) Soichi Shibue, Chief of Personnel Section of the Cabinet Secretariat.

(7) Mitsuo Tanaka, Deputy Chief of Political Affairs Division of the Central Liaison Office.

The committee's assignment was to review all publications which appeared during the critical period, to discover articles which violated the basic provisions of paragraph 1, SCAPIN 548,[30] and to compile a "blacklist" of public information media organizations which published such articles. More than 300 persons were employed by the Japanese Government to assist the committee which conducted the initial research and prepared a preliminary report. But its members, entrusted as they were with other official duties of pressing importance, found themselves unable to devote sufficient time to the work. The original committee was, therefore, replaced by a new committee of six experts appointed by the Government on the basis of specialized experience in the public information media field. The members of this committee were:

(1) Naro Okada, Director of the Imperial Library, had served since 1929 as an official of that organization. He was concurrently Secretary of the Education Ministry and a member of the Japan Sociological Association.

(2) Kunio Odaka, professor of literature at Tokyo Imperial University, was a graduate of sociology division of the same institution and had been a member of the Tokyo Imperial University faculty since 1937.

(3) Ryoichiro Ota, attended school of economics at Kyoto Imperial University but was imprisoned for violation of Peace Preservation Law during his school days and was forced to leave the university. He was an economist and nonofficial adviser of the Tientsin Consulate General from 1938 to 1945.

(4) Taiji Kameshima, professor of economics at Hosei University, was a former staff writer of "Diamond," a financial journal. He was also a member of the Mitsubishi Economic Research Institute.

(5) Takezo Kaneko, professor of literature at Tokyo Imperial University, had held that position since 1935 and was the author of many philosophical studies.

(6) Toyoo Hori, professor of political science and theology at Taihoku Imperial University between 1929 and 1942. He had written extensively on political and religious subjects. A Christian, he had dared to criticize the suppression of religious freedom in Germany during the Nazi regime.

b. *Activities of the Committee.* On April 30, 1947, the new committee submitted a report of its findings on 36 newspaper companies, 35 book and magazine publishers, 8 motion-picture and theatrical companies and 24 organs of nationalistic organizations. On May 5, 1947, the committee submitted to Government Section a blacklist naming 330 organizations, 302 of which were dissolved nationalistic organizations. On June 9, 1947, the committee submitted reports on 193 newspaper companies, 493 magazine publishers, 215 book publishers, and 8 motion-picture and theatrical companies.

[30]Appendix B: 5a, SCAPIN 548, January 4, 1946.

In the final selection of public information companies and organizations to be placed on the blacklist two factors were considered by the committee The first of these was the extent of the company's influence, as determined by circulation in the case of newspapers or magazines and the number of productions in the case of theatrical and motion-picture companies The second was the frequency with which a company engaged in the propaganda activities proscribed by SCAPIN 548 and the interpretation of Category G

The committee on June 20, 1947, presented to the Japanese Government a recommended blacklist of public information media organizations naming 117 newspaper companies, 225 book and magazine publishers, 15 theater and motion-picture companies, 6 broadcasting corporations and 5 information control agencies These organizations were subsequently listed in Prime Minister's Office and Home Ministry Ordinance No 3 of 1947

5. The Implementing Ordinance

Paragraph 5 of the Japanese Government's interpretation of Category G, while specifically listing various purgeable positions in newspaper companies, did not give a clear definition of such positions in other media of mass communication Therefore, it was not adequate to guide application of the purge to these other media On June 13 the committee investigating information media, realizing the need for modification of that part of the ordinance, recommended appropriate changes to the Government. This recommendation was embodied in a Prime Minister's Office and Home Ministry Ordinance promulgated on June 30

On the day that the ordinance was promulgated, the Japanese Government issued an explanatory statement summarizing the work of the Public Information Media Investigation Committee and explained the policy and the method by which the blacklist had been compiled This statement pointed out that the work had been in accord with

"the general policy and outline of the purge directive, applicable to the press and publications as indicated by Imperial Ordinance No 1, 1947, and the so-called 'In-

since then been actively engaged in the investigation of the contents of these publications investigations have now been completed on the basis of which the Government has decided upon the scope of the information media companies and organizations, as well as the responsible parties to whom the removal and exclusion clause of the purge directive is applicable

"As the result of examination by the Information Media Investigation Committee companies or organizations having strong nationalistic or militaristic tendencies are recognized as falling under the purge directive regardless of the number of circulation or the number of cases falling under SCAPIN 548

"In the case of other ordinary media of mass communi-

other relevant factors

a *Purge Provisions* Paragraph 5, subparagraph d, of the interpretation of Category G attached to the basic ordinance was amplified into a 25-page document listing by name the affected information media organizations and stating precisely which officers were subject to removal and exclusion A total of 368 organizations including 117 newspaper companies and news agencies, 225 book and magazine publishers, 15 theatrical and motion-picture companies, 6 broadcasting corporations and 5 control associations were listed. Persons who held any of the specified positions during the period between July 7, 1937, and December 7, 1941, in any one of the blacklisted organizations were declared subject to purge scrutiny.

Further, persons who, between July 7, 1937, *and September 2, 1945*, held high positions in governmental agencies charged with the con-

trol of public information, including the Board of Information, Home Ministry, Metropolitan Police Board, Education Ministry, Communications Ministry, Justice Ministry and the Planning Board, were listed as subject to designation.

All information media organizations listed in paragraph 9 of appendix II to Cabinet and Home Ministry Ordinance No. 1 of 1947 were to be screened in accordance with this additional criteria. All persons who had worked in the public information field were by this ordinance made subject to scrutiny, including those who had been screened and passed before the public information purge criteria were determined.

b. *Counterevidence Provisions.* Provisions included in Prime Minister's Office and Home Ministry Ordinance No. 3 of 1947 permitted submission of counterevidence by affected persons prior to final action on individual cases. Counterevidence was required to be submitted within 30 days from the date of the ordinance.

Two types of counterevidence could be presented. One was counterevidence submitted by an information media company to prove that the company should be removed from the blacklist. Counterevidence of this type was evaluated and accepted or rejected by the Information Media Investigation Committee. The other was counterevidence submitted by an individual within a blacklisted company showing that he did not himself participate in the proscribed activities of his company. This type of counterevidence was submitted to the Central Screening Committee at the time of individual screening.

Of the 368 companies placed on the blacklist, 51 newspaper companies, 74 book and magazine publishers and 8 motion-picture companies, a total of 134 companies in all, submitted counterevidence to the Japanese Government. To conduct preliminary investigation of counterevidence submitted, two subcommittees were established in the Secretariat of the Central Screening Committee: a 10-man subcommittee for books and magazines and a 4-man subcommittee for newspapers. On the basis of their findings they were authorized to recommend to the Government acceptance or rejection of such counterevidence, but the Information Media Investigation Committee reserved the right to make final recommendations on all borderline cases. Since the screening of personnel in information media had already started, this procedure was established to expedite the disposition of counterevidence cases.

Examination of the 134 counterevidence cases was completed October 24, 1947. On this date in a memorandum to General Whitney, Chief of the Government Section, the Japanese Government requested that 38 information media companies be deleted from the blacklist on the basis of acceptable counterevidence. Upon review of these cases, General Whitney agreed that in all but one case the recommendation was reasonable, while the recommendation concerning a motion-picture company was rejected because this company had been active in the distribution of German propaganda films in Japan during the critical period.

c. *Amendments to the Ordinance.* On November 26, 1947, the Japanese Government promulgated Prime Minister's Office and Home Ministry Ordinance No. 11 amending Cabinet and Home Ministry Ordinance No. 1 of 1947 to remove 37 companies from the blacklist and to add 16 others on which research had been completed. Among the 16 organizations added to the blacklist was the *Kodo Kai,* or Imperial Way Society, whose official organ, *Kodo,* had been edited and published by Rikizo Hirano.

6 Results of Screening

Paragraph 9 of appendix I to Cabinet and Home Ministry Ordinance No. 1 of 1947 provides that principal officials of newspaper

companies having a circulation of 20,000 or more and those of all other media of mass communication of comparable influence must be screened, a provision which affected about 1,400 persons. The Central Screening Committee began its task in the middle of August 1947 with those persons in blacklisted companies which had not submitted counterevidence. By the end of August 1947 the Central Screening Committee had screened 430 such persons. By the end of the following month 1,010 principal public office holders in important information media companies had been screened, of these 61 persons were judged to fall under the directive By the end of October 1947 the figure had increased to 1,280 screened and 120 purged.

The screening phase of the information media purge was substantially completed by the end of November 1947 Of 1,424 principal office holders screened, 1,259 were passed and 165 were barred The following statistics show the results of screening for principal types of information media

	No of companies screened	*No of persons screened*	*Passed*	*Barred*
Newspaper Companies	127	740	658	82
Book and magazine publishers	129	581	519	62
Motion picture companies	7	75	56	19
Broadcasting Corporations	1	28	26	2
Total	264	1,424	1,259	165

These figures, however, do not include persons who held public offices other than those in information companies but were nevertheless brought under the scrutiny of the Central Screening Committee because they had held policy-making positions in blacklisted information media organizations during the critical period Of 44 such persons who were rescreened as a result of such scrutiny, 23 were purged and 21 passed

7. Provisional Designation

The Japanese Government at the time of the promulgation of Prime Minister's Office and Home Ministry Ordinance No 3 of 1947, estimated that approximately 600 persons would be affected However, a considerable number of these had resigned rather than submit questionnaires for screening. Furthermore, a substantial number of the companies on the information media blacklist had dissolved prior to the promulgation of Cabinet and Home Ministry Ordinance No 1 of 1947 and their officials had never been subject to screening

This group of resignees and former officers of dissolved organizations were provisionally designated in accordance with Article VII-II of Imperial Ordinance No 1 of 1947 Under the terms of Article VII-III of the same Ordinance they were given 30 days in which to present counterevidence showing cause why they were not subject to the purge

In July 1947 this project was undertaken by the Japanese Government, it began by collecting all available data on persons who were former officials of government information control agencies and those who had held principal positions in the blacklisted information media organizations

Provisional designation of officials of Government information media control agencies was completed at the end of November [illegible]. Of 123 persons falling under this category, [illegible] were finally designated while 3 were exempted on the basis of acceptable counterevidence

As for the provisional designation [illegible] pal officers in blacklisted information [illegible] the Japanese Government was [illegible] in obtaining relevant data on 212 [illegible] organizations. The provisional [illegible] of these persons began on October [illegible] of 1,135 persons were examined [illegible] were provisionally designated [illegible] later cleared on the basis of [illegible] evidence

The purge of [illegible] listed had its sequel [illegible] who had actually [illegible] published. While [illegible] purpose of [illegible]

mation Media Investigation Committee had uncovered much damaging evidence against individual writers. In December 1947 the Government began to list these persons, and by the conclusion of the purge program on May 10, 1948, had designated approximately 300 of them.[31]

IV. Conclusion

The Public Information Media Purge removed from positions of power and influence the fourth party in the fateful ruling alliance that drove the Japanese nation to the very brink of destruction. For, while the militarists and their accomplices in the civil government supplied the leadership and while the great industrial combines furnished the arms, it was primarily the masters of press and motion picture who engendered among the people the will toward war. The principles of the Potsdam Declaration demanded that those who so deceived and misled the Japanese people be removed from positions in which they control the thinking and, therefore, the destiny of the nation.

[31]For a detailed statistical analysis of the effect of the Public Information Media Purge, see appendix B: 50, General Summary of Purge Statistics

Part IV The Dai Nippon Butokukai Phase

I. History and Background of Butokukai

1. Founding and Prewar Development

The Dai Nippon Butokukai (Great Japan Military Virtue Association) was first organized in 1895 by certain citizens of Kyoto who wished to reawaken public interest in the ancient and distinctive martial sports of Japan The so-called "national sports" which the association intended to popularize were judo (Japanese wrestling), kendo (Japanese fencing), and kyudo (Japanese archery) The first recorded Butokuden (Hall of Military Virtue) was built during the reign of Emperor Kammu (782–806 A D) within the precincts of the Heian Shrine in Kyoto at the time when that city was the capital of Japan Kyoto was, therefore, the logical site for a society whose purpose was to arouse the martial spirit of the Japanese through the medium of ancient and warlike sports The first step taken by the organizers of the Butokukai was to build, in the same style and approximate location of the first known Butokuden, a hall in which the sports could be practiced, and in which classes in the spirit of Budo, (better known as Bushido or "way of the warrior") could be conducted The organizers chose as their first chairman the Governor of Kyoto, Viscount Senshu Watanabe. So many Japanese came to regard the society as a convenient medium through which they could readily express their desire for continuance of the feudal samurai code in the face of modern western influence that independent units modeled after the original Kyoto Butokukai were organized throughout Japan under the governors of the prefectures In 1905 these independent branches were organized into a national organization, drawing its leadership from nationally known political figures. In 1915, however, the national chairman, Baron Kanetake Oura (at that time Home Minister in the Okuma cabinet and one of the original founders of the Butokukai) was implicated in an election fraud and was forced to retire from politics and resign his position in the association. This incident and the political turmoil which existed in Japan during this period altered the policy of the society which, from that time forward, drew its chairmen from the retired ranks of generals and admirals on the theory that they would be "impartial and (of) high integrity and unrelated to politics " This policy was followed until the ascendancy of Tojo with the successive appointments of Lt Gen. Baron Naruyuki Miyoshi (1916–18), Gen Baron Nobuyoshi Asada (1918–23), Admiral Baron Rokuro Yashiro (1923–26), Gen Baron Furataro Honodo (1926–37), and Gen Senjuru Hayashi (1937–42)

2. Wartime Activities of the Dai Nippon Butokukai

With the gradual ascendancy of the military as the dominant controlling factor in Japanese politics culminating in the appointment of Tojo as Prime Minister in 1941, the Butokukai increasingly became a means of inculcating the militaristic spirit among the masses of Japan Hitoshi Ashida, who as Welfare Minister in the Yoshida cabinet, was interviewed concerning this society stated: "With the ascendancy of the Konoye regime in 1939 . . there was a tendency to amalgamate the society with the Tenno Rule System, but not until after the outbreak of the war did the organization come under the control of the government. Premier Tojo automatically became the national presi-

dent, who directed the activities. The organization was transformed for military purposes. *Juken jitsu* (bayonet practice) and *shageki* (rifle marksmanship) were included in the program." Going further into the wartime activities of the Butokukai, Toshio Watanabe, postsurrender business manager, stated that: "The organization was placed under the influence of five Ministries: Home Affairs, Education, Welfare, Army and Navy. A subsidy was granted by the government to the society for additional operating expenses. . . . Militant nationalism was stressed. . . . The March 1941 statistics revealed a total membership of 3,178,000."

3. Postsurrender Activities of Dai Nippon Butokukai

Following the surrender, officials of the Dai Nippon Butokukai, possibly fearing that the Occupation authorities would order them to dissolve, reorganized to their pre-1942 status. This step was taken by the society to cover up its war-time record and to continue its activities under the camouflage of democratic reorganization. The reorganization which took place was superficial and designed to replace those officials who had been apprehended as war criminals, or who, having fallen under the purge directive, might discredit the society in the eyes of the Occupation were they to remain at their posts. The Assistant Chief of Staff, G-2, in recommending dissolution of the organization stated: "The official purpose of the organization has not been changed, so far as its charter reveals, and this is 'to promote military arts and to contribute to the training of the people'." In fact, Hisaku Shimura, prominent Butokukai leader in Ibaragi, said at this time: "We wish to introduce to the general public the real nature of military arts by continuous meetings in various places, and to propagandize the reason why we should absorb the real spirit of military arts in order to rebuild a peaceful Japan. We want to have the people acknowledge that the military arts are obviously not the tools for war, but for peace, and are really the national arts of Japan." The contradiction inherent in such rationalization should have been obvious but the Japanese Government hesitated to add the Butokukai to the list of proscribed organizations since to do so would render its officials subject to the purge.

II. Action Against the Society

1. Dai Nippon Butokukai Ordered Dissolved

On the basis of such facts as these, the Assistant Chief of Staff, G-2, recommended in a memorandum to the Chief of Staff that: "Dissolution of Dai Nippon Butokukai by order to the Imperial Japanese Government is recommended in accordance with the provisions of . . . SCAPIN 548, paragraph I f, on the grounds that this is an organization 'affording military or quasi-military training' and which provides for the 'perpetuation of militarism or a martial spirit in Japan'." Paragraph I f of SCAPIN 548 states: "You will prohibit the formation of any political party, association, society, or other organization and any activity on the part of any of them or of any individual or group whose purpose, or the effect of whose activity is . . . affording military or quasi-military training."[32] Pursuant to this memorandum, the Japanese Government was orally instructed to add the Dai Nippon Butokukai to the list of organizations in appendix A of SCAPIN 548 and to dissolve the organization

[32]Appendix B: 5a, SCAPIN 548, January 4, 1946.

together with all its branches and any organizations which it controlled or with which it was affiliated

It is interesting to note that in 1943 the Attorney General's Office of the United States Government listed the branches of the Butokukai existing in America among a group of subversive organizations which also included that notorious arm of politics by terrorism, the Kokuryu Kai or Black Dragon Society

2. Evolution of the Butokukai Purge

a *Efforts to Forestall SCAP Action* Prior to November 1, 1946, the date on which the Japanese Government was given verbal instructions to dissolve the organization under the terms of SCAPIN 548, the Butokukai had begun to formulate a plan for self-dissolution This plan, however, contained the proviso that autonomous organizations would be set up in each sport to continue the activities of the old society, and did not, therefore, represent a sincere attempt to dissolve the Butokukai

b *Category "G" Invoked Against Leaders* Faced by SCAP's demand for action on the Butokukai, Home Minister Etsujiro Uehara personally presented a petition to General Whitney in which he attempted to maintain that the association was not guilty of furthering militant nationalism among the Japanese people The petition did, however, admit that "after the commencement of the Pacific War, it was inevitable that the various set-ups internally moved to a wartime footing and the Butokukai could claim no exception to this rule . and with the object of coordinating military arts and of the advancement of bayonet drill and shooting, the Ministry of Welfare planned to establish a new martial arts organization. " Thus, he tacitly admitted that the Butokukai afforded military or quasi-military training In reply to Home Minister Uehara's petition, General Whitney stated:

"I have carefully considered your memorandum concerning the status of the Great Japan Military Virtue Association (Dai Nippon Butokukai) This association was dissolved and its funds and other property seized under Home Ministry ordinance dated November 8, 1946, because during the war the association became an instrument of the militarists

"I am advising State Minister Kanamori that in the administration of Imperial Ordinance No. 1, dated January 4, 1947, all influential members of this association or any branch thereof within the period December 6, 1941, and September 2, 1945, will be treated as falling within the provisions of Category G, appendix A, SCAPIN 550, in the absence of satisfactory proof to the contrary "

c *Butokukai Purge Criteria Determined* This first formal document to be sent to the Japanese Government concerning the Dai Nippon Butokukai raised several points at issue

(1) *Militaristic Nature Established* The first of these was the question of whether or not the Butokukai had become a device of militarists This question had been settled by the Japanese Government with the issuance of Home Ministry Ordinance No 8 of 1946, dissolving the Dai Nippon Butokukai because "during the war, the association became an instrument of the militarists " The Japanese Government had taken this action to avoid dissolving the Dai Nippon Butokukai under the terms of paragraph I f, SCAPIN 548

(2) *Dissolution by Special Ordinance.* The second point at issue was the effect that the action of the Japanese Government in dissolving the society under a special ordinance would have upon the purge of Butokukai officials Had the action been taken under SCAPIN 548, all officers, directors, or influential members of the Butokukai would automatically have been purgeable under the corollary terms of Category C of SCAPIN 550 which includes all organizations dissolved under SCAPIN 548. This question was settled by General Whitney's statement that ". . . all influential members of this association (Dai Nippon Butokukai) . . . will be treated as falling within the provisions of Category "G" (rather than "C"), appendix A, SCAPIN 550." Adding the Butokukai to Category G rather than to Category C fundamentally changed the nature of the examination of Butokukai leaders since it [illegible]

for the blanket removal required by C, a system whereby each Butokukai official was to be judged on the individual merits of his case.

This change was of great significance. It meant that only "... those influential members within the period December 6, 1941, to September 2, 1945, will be treated as falling within the provision" of the purge, rather than all officers and influential members from 1895 to October 1946. The December 6 date was, after further study, changed by a memorandum from General Whitney to the Director General of the Cabinet Secretariat which stated, "persons who held . . . (listed) offices in the association between *March 22, 1942*, and *September 2, 1945*, will be deemed influential members" of the Dai Nippon Butokukai and as such will be held purgeable. This change of date was based on the fact that it was in March 1942 that the Butokukai was brought under direct government control. Further amendment to those dates was made in the ordinance setting forth criteria for the purge of former officials of the Dai Nippon Butokukai. Under these criteria, the critical period for officers on the prefectural level began with September 1942 since for the most part the reorganization of the headquarters of the Butokukai in March 1942 antedated that of its prefectural branches by 6 months.

The question of which officers of Dai Nippon Butokukai should be considered to have held purgeable positions was defined in a later memorandum by General Whitney to the Director General of the Cabinet Secretariat. This document stated in part:

"... I am now advising Minister of Justice Suzuki that in the administration of Imperial Ordinance No. 1 dated January 4, 1947, persons who held the following offices in the association ... will be deemed influential members thereof:

(a) At the national level: President, vice president, chief of the board of directors, directors, chiefs of sections.

(b) At the prefectural level and the six principal cities: Chief, deputy chief, chief of the board of directors, directors, chiefs of sections.

(c) At the local branch level: Chief ..."

This decision was made after an extensive investigation into the actual duties of the officials to determine which of them had held the most responsible positions. Emphasis was placed on the responsibility of those officials who were most active in the association after its reorganization in 1942. These were primarily Home Ministry bureaucrats and high police officials. In a final attempt to forestall the issuance of the ordinance effectuating the purge of these "influential members" of the Butokukai, the Japanese Government estimated that, as the criteria stood, 8 governors, 9 vice governors, 3 members of the Diet and 71 ranking members of the bureaucracy then in office would have to be removed. It later proved that none of the prefectural governors, only 3 of the vice governors, and none of the Diet members were actually subject to removal; and only 15 of the key bureaucrats were designated.

Prior to issuing the ordinance implementing the purge of militaristic officials of the Butokukai, it was necessary to outline what would constitute acceptable counterevidence. After much research and many conferences, the Japanese Government on July 6, 1947, was directed to insure that "... the contrary evidence (concerning the officials questioned because of their affiliation with the Butokukai) be required to be produced by not later than August 15, 1947, in order that this matter of long-pending duration with the former Cabinet can be concluded with reasonable expedition." Main points included in the ordinance as acceptable counterevidence were: "With respect to all officers of the Butokukai '(1) Any person who can give proof that he made positive attempts to obstruct the militarization of the association. (2) That his personal record was such as to show that he did not identify himself with any quasi-militaristic or quasi-ultranationalistic activities' " will be favorably considered. The above two provisions affected officers on all levels. Criteria were also included affecting holders of specific positions in the national, prefectural and local levels of the association: (1) That a person who held what he considered a "nominal position" did not concurrently hold an

active position such as section chief. (2) Differentiation was also made between those officials who held positions prior to the reorganization and those who came to authority in the Butokukai subsequent to the reorganization On July 24 this plan was presented to Government Section by Japanese Government representatives General Whitney then determined that the plan would be acceptable if personal assurances were given by State Minister Suzuki, as the responsible Japanese Government official, that the plan would accomplish the examination of Butokukai within the letter and the spirit of SCAPIN 550 Such assurances were given and the plan was accepted

3. Administration of the Butokukai Purge

a *Implementing Ordinance Issued* On July 25 the plan for the purge of militaristic officers of the Butokukai was issued by the Cabinet in the form of a draft Cabinet order and a press announcement of this decision was made On August 2, Prime Minister's Office and Home Ministry Ordinance No 6 was issued adding the Dai Nippon Butokukai to the remarks appended to Article VII, appendix I, Cabinet and Home Ministry Ordinance No 1 of 1947 This ordinance incorporated all of the provisions discussed during the period that the plan for the inclusion of the Butokukai under SCAPIN 550 was under consideration, namely (1) that only certain officers would be affected, (2) that the critical period would be from March 22, 1942 to September 2, 1945, (3) that evidence to the contrary would be considered

b. *Screening Schedule Set* On July 15 in reply to a letter from Prime Minister Tetsu Katayama alleging that several hundred key bureaucrats would be removed from public office by the Butokukai Purge, SCAP stated.

"In order that the [illegible] from public service of [illegible] ments beginning with those at the highest level in the national government on down "

Therefore, the Central Screening Committee arranged to screen officers of the central (national) office of the Butokukai by August 15, 1947, chiefs of prefectural branches by September 11, 1947, chief directors and vice chiefs of prefectural branches by November 1, 1947, and local branch chiefs by November 14, 1947.

c *Provisional Designation Phase* After the screening of these categories, there still remained the provisional designation of former officials of the Dai Nippon Butokukai, and the screening of prefectural directors and section chiefs, many of whom had submitted counter-evidence which had to be considered and screened by the screening committee

d *Conclusion of the Butokukai Purge* During the following 3 months, the completion of this screening backlog was accomplished and by March 6, 1948, the entire program was completed On that date, the Japanese Government submitted a final report summarizing the action taken by the various screening committees This report, which marked the completion of the Butokukai phase of the removal and exclusion program, is statistically summarized below

4. Statistical Summary

Result of Screening of Former Officials of the Dai Nippon Butokukai by Categories

	No	*Percent*
1 National officers		
Passed	5	08 4
Removed	4	06 8
Provisionally designated and barred	19	32 1
Previously designated	21	35 8
Deceased	10	16 9
Total	59	100 0
2 Prefectural officers		
A. Branch chiefs		
Passed	3	02 0
Removed	0	00 0
Provisionally designated and barred	55	45 0
Previously designated	62	50 0
Deceased	4	3 0
Total	124	100 0

B. Vice chiefs and chief directors:		
Passed	64	26.2
Removed	40	16.3
Provisionally designated and barred.	127	52.1
Deceased	13	5.4
Total	244	100.0
C. Directors and section chiefs:		
Passed	169	51.7
Removed	8	2.4
Provisionally designated and barred	128	39.4
Deceased	21	6.5
Total	326	100.0
3. Subbranch chiefs:		
Passed	416	31.4
Removed	381	29.6
Provisionally designated and barred	462	35.0
Previously designated	5	3.6
Deceased	56	.4
Total	1,320	100.0

	Passed	Removed	Barred PD'd	Previous designat
National headquarters officials	5	4	19	21
Prefectural officials				
Chiefs	3	.	55	62
Vice chiefs and chief directors	64	40	127	..
Directors and chiefs of sections	169	8	128	..
Chiefs of subbranches	416	381	462	5
	657	433	791	88

	No.
Total passed	65[illegible]
Total barred and removed	1,31[illegible]
Total deceased	10[illegible]
	2,07[illegible]

Part V. Dissolution of Ultranationalistic Societies

I. Basis of the Action

1. Basic Policy Papers

A companion directive issued simultaneously with SCAPIN 550 required the dissolution of organizations sharing responsibility for Japan's program of aggression and prohibited the formation of similar groups in the future This directive, SCAPIN 548, was based largely on the same provisions of the Potsdam Declaration, the United States Post-Surrender Policy for Japan, and the subsequent basic policy directives from the Joint Chiefs of Staff on which the purge was based

2. Requirements of the Joint Chiefs of Staff

Certain additional specifications set forth in the basic Joint Chiefs of Staff directive were.

a Dissolution of the Political Association of Great Japan, the Imperial Rule Assistance Association, the Imperial Rule Assistance Political Society, their affiliates and agencies or any successor organizations, and all Japanese ultranationalistic, terroristic and secret patriotic societies and their agencies and affiliates

b. Dissolution of all military and para-military organizations together with all reservists' and other militaristic associations which might serve to keep alive the military tradition in Japan

c. Removal of all obstacles to the revival and strengthening of democratic tendencies among the Japanese people specifically, abrogation of all legal hindrances to the formation of organizations of employees along democratic lines, subject only to safeguards necessary to prevent the perpetuation of militaristic influence under any guise or the continuation of any group hostile to the objectives and operations of the Occupation forces

d Control of all existing political parties, organizations and societies, encouragement of those whose activities were found to be consistent with the objectives of the Occupation, dissolution of those whose character or activities were inconsistent with those objectives

e Impounding of all gold, silver, platinum, currencies, securities, accounts in financial institutions, credits, valuable papers and all other assets of the Political Association of Great Japan, the Imperial Rule Assistance Association, the Imperial Rule Assistance Political Society, their agencies and affiliates or any successor or similar organizations, and all Japanese nationalistic, terroristic and secret patriotic societies, agencies and affiliates and their officials, leading members and supporters, extension of the same treatment to all organizations, clubs or other associations prohibited or dissolved by SCAP

f All property, real and personal, owned or controlled by any of the organizations referred to above, should be considered public property. If there was any doubt as to the status of any property it was to be considered public property.

II. SCAP Implementation

1. Preparation of the Directive

On November 10, 1945, Government Section drafted a memorandum to the Japanese Government designed to carry out the terms of the policy directives.

a. *Abolition of Certain Groups Proposed.* The explanatory staff study pointed out that not only the basic directives but the

". . . successful accomplishment of the objectives of the Supreme Commander in Japan, will require an effective dissolution of all existing societies which have ultranationalistic, militaristic or secret purposes, or whose activities irrespective of their declared purposes, support actions or doctrines contrary to the interest of the Occupation Forces or to the establishment of a healthy democratic system, or the support of militarism. In order to make this effective it will be necessary to dissolve organizations known to be of the above-mentioned types and also to provide the Japanese with standards for determining whether or not other organizations are ultranationalistic, militaristic or secret."

b. *Action Against Secret Societies Held Vital.* The staff study also noted that

"There is some indication that the leading spirits of organizations already dissolved by the Japanese Government have joined together again under new names and with a statement of new purposes to further activities similar to those which brought the dissolution of their original organization. Effective action in this field will therefore require public declaration of the purpose and membership of newly formed societies in the field of politics, so it may be determined whether or not the organization perpetuates proscribed purposes or embraces such a proportion of members of illegal societies that a continuation of former activities may be presumed."

c. *Recommendation of the Government Section.* The draft included a preliminary listing of organizations whose purposes were then known to fall within those categories and a definition of the kinds of organizations whose purposes or activities were proscribed. It futher recommended that the order should require the Japanese Government to prohibit the activity of organizations which tended to perpetuate the militaristic, ultranationalistic or secret purposes of previously dissolved organizations. It was pointed out that in order to insure the effectiveness of the directive, the order should require existing organizations concerned with politics or Japanese foreign relations and new organizations, formed for political purposes, to declare their purposes, officers and membership. Also mentioned was the fact that for practical reasons the declaration of membership was not to be required in the case of trade unions whose activities were confined to matters of wages, hours and working conditions.

d. *Issuance of the Directive.* Following coordination among the various interested staff sections of General Headquarters and revision of the initial list of organizations to incorporate the recommendations of the other sections, the directive was issued on January 4, 1946, simultaneously with the purge directive.

2. The Directive Analyzed

The directive[33] specified that the Japanese Government should require the dissolution and prohibit the formation or activity of any political party, association, society or other organization and of any individual or group whose purpose, or the effect of whose purpose, fell within any of the following categories:

a. *Proscribable Aims and Purposes Listed.* (1) Resistance or opposition to the Occupation forces or to orders issued by the Japanese Government in accordance with SCAP directives.

(2) Support or justification of aggressive Japanese military action abroad.

(3) Arrogation by Japan of leadership of other Asiatic, Indonesian or Malayan peoples.

(4) Exclusion of foreign persons in Japan from trade, commerce or the exercise of their professions.

(5) Opposition to free cultural or intellectual exchange between Japan and foreign countries.

(6) Affording military or quasi-military training, or providing benefits, greater than

[33] See Appendix B: 5a, for full text of this directive, SCAPIN 548.

similar civilian benefits, or special representation for persons formerly members of the Army or Navy, or perpetuation of militarism or a martial spirit in Japan.

(7) Alteration of policy by assassination or other terroristic programs, or encouragment or justification of a tradition favoring such methods

b *Membership Provisions Outlined* More specifically, the directive ordered the dissolution of any future organization any of whose principal officers were members of organizations abolished in accordance with the directive, former commissioned officers of the Imperial Japanese Regular Army or Navy or the Special Volunteer Reserve, who served on active duty at any time since January 1, 1930, or persons who served in or with the military police or naval police, or any special or secret intelligence or military or naval police organization Also banned was any society whose membership included more than 25 percent former members of an organization or organizations abolished or prohibited in accordance with the directive

c *Certain Undesirable Societies Named.* The directive listed 27 organizations as examples of the sort deemed undesirable under the provisions enumerated The organizations listed and other organizations whose purposes or activities were the same or similar were to be immediately dissolved, together with any organizations which they controlled or with which they were affiliated

d. *Confiscation of Property Ordered* The Japanese Government was ordered to take immediate action to prevent all transactions involving property owned or controlled, directly or indirectly, in whole or in part, by any organization dissolved or to be dissolved in accord with the directive. All such property, including all books, files and records of such organizations, was to be seized and held in the government's custody Complete records of all such property were to be obtained and kept available for inspection as public records Officials receiving such records were made personally responsible for their safekeeping and use as required by the directive.

Any such property suitable for use in the production of food, shelter or other necessities of life was to be allowed to be exploited as promptly as possible for those purposes.

e *Public Registration Required* In accordance with the policy directing control of all political parties, organizations and societies, the directive specified that they and all groups whose purpose or activity consisted of proposing or supporting candidates for public office, influencing the policy of government, or the discussion of the relations between Japan and foreign powers must be publicly registered This registration was to include the organization's name, its purpose, the address of its headquarters office, the names and addresses of its officers together with a statement as to their military or police service and the names of any associations, societies or parties of which they are or have been members, and a roster of the names and addresses of its membership

The registration was to be filed in the office of the mayor of the town or city in which the organization had or intended to have its principal office The registration was to be kept up to date, and made available for public inspection No fee was to be charged in connection with its preparation

f *Freedom of Assembly Safeguarded* In order to provide safeguards against the use of the directive in any manner at all similar to the old repressive registration and control measures used by the Japanese, it was specified that the provisions requiring the filing of a roster of the names and addresses of members would not apply to groups or other organizations of workers or employees who meet for the purpose of discussing questions relating to wages, hours and working conditions or the choice of persons to represent them in negotiations with their employers about such questions.

The directive stated that the purpose of these provisions was to secure public knowledge of the character of political organizations in Ja-

pan and to prevent the formation of secret, militaristic, ultranationalistic and antidemocratic societies and organizations. It was specifically stated that they should not be interpreted nor should they be applied in a manner which would interfere with freedom of assembly, speech, or religion except in connection with specified purposes and activities.

The Japanese Government was ordered to enact appropriate laws or ordinances to carry out the terms of the directive and to prevent further activities contrary to its terms.

3. Japanese Government Implementation

In the wake of the Cabinet crisis precipitated by the issuance of SCAPINS 548 and 550 representatives of SCAP and of the Japanese Government met to discuss the implementation of the directives. In view of the approaching elections, priority was given to SCAPIN 550, but work on SCAPIN 548 was commenced at the same time.

a. *Implementing Ordinance and Home Ministry Orders.* As a result of these conferences, the Japanese Government on February 23 promulgated Imperial Ordinance No. 101 of 1946 which incorporated into Japanese law the terms of the directive and added specific penalties for violations. Two days later the government issued Home Ministry Orders 19 and 20 of 1946 ordering the application of Imperial Ordinance No. 101 to 121 specifically named organizations. These included the 27 originally listed by SCAP and 94 others which the Japanese authorities themselves regarded as falling under the directive. In the 2 years that followed, the government issued 9 additional orders, bringing 26 more organizations under the provisions of the directive and increasing the total of those listed to 147. Some of the 26 organizations subsequently added were secret, terroristic societies like the Blood Brotherhood (Ketsumei Dan) and the Soldiers of God (Shinpei Tai) which had dissolved themselves when the complete ascendancy of the militaristic clique in Japan and the launching of the Great East Asia war assured them that their purpose had been accomplished. Others like the Japan Principle Society (Genri Nippon Sha) were societies devoted to popularizing ultranationalistic theories and ideas. Many of these existed throughout the war but dissolved themselves after the surrender, anticipating dissolution by order of the Occupation authorities. The purpose of listing such organizations under Imperial Ordinance 101 was to bring them under the terms of the directive so that their property could be impounded, their influential members rendered subject to the political purge and to prevent the formation of successor groups.

b. *Postwar Political Group Dissolved.* The provisions of SCAPIN 548 were applied not only to wartime and prewar societies but to postwar organizations as well whenever it became obvious that they constituted a menace to the development of democracy in Japan. Thus on December 12, 1947, the Home Ministry ordered the dissolution of the Elite Masses Party (Shinei Taishu To). Originally a gang of racketeers operating in Tokyo's teeming Asakusa ward, this organization had glorified itself with the title and outward trappings of a political party. Under the leadership of its ambitious chief, Konen Maki, the Elite Masses Party had entered the political scene in a burst of "soshi" violence.* In a press announcement explaining the action taken against the Elite Masses Party, the Government announced that the stabbing of a union leader and other acts by Maki's criminal henchmen had identified the organization as one which sought "alteration of policy by assassination . . ." and which encouraged or justified ". . . a tradition favoring such methods." As such it was subject to dissolution under the terms of Imperial Ordinance No. 101.[34]

[34]Appendix B: 5e, Abolition of Political Parties, Associations, Societies, etc., Imperial Ordinance No. 101, February 23, 1946.

*"Soshi" (hired ruffians) were a feature of Japanese labor conflicts and of Japanese politics. In the prewar era every political party used them and many leading politicians employed a private army of thugs.

c. *Political Party Registration* Japanese Government compliance with the provisions of SCAPIN 548 requiring the registration of political parties was slow at first. No action was taken until the end of January 1946, when SCAP, determined that this important device for insuring a free election should not be ignored, directed the Home Ministry to secure the required reports Despite repeated assurances from that agency, compliance continued to be unsatisfactory for some time thereafter Inadequate information, tardily submitted, proved unreliable and it was further discovered that the Japanese Government had failed to prohibit further political activity by those parties which had not filed the required reports Full compliance was obtained only when the individual Home Ministry officials were called to account

(1) *Police Enforcement Powers Defined* The function of the Japanese police in the enforcement of the directive was defined on July 2, 1946, after complaints had been received that police had made unauthorized house-to-house canvasses to determine the party affiliations of individual Japanese Home Ministry representatives were told that police could do no more than to remind secretaries of local registered political groups of the need for submitting regular reports Police were not to take the initiative in seeking to determine personnel who should have been reported as members Police were to make investigations only when specifically instructed to do so by the responsible bureau Such investigations, when undertaken, were to be limited to the task specifically assigned In this connection warning was given against the possible reorganization of a secret police under the guise of an information agency required by SCAP

(2) *Application to Labor Unions Clarified* In conference with Home Ministry officials held on July 2, 11, and 18, 1946, Government Section representatives clarified the application of the portions of SCAPIN 548 dealing with the registration of organizations Complaints had been received indicating that some unions (particularly farmers' unions) had been required to register because officials had ruled that they were political organizations. The Home Ministry representatives, voicing the police attitude, argued that some unions were sponsored by political parties, that they actually did engage in political activity by sponsoring demonstrations and engaging in political debates with other purely political organizations The Home Ministry representatives argued that, for example, because the Liberal Party concerned itself with unemployment, unemployment was a political issue. Since a union was also concerned with unemployment it was to be regarded as a political association and registered as such It was explained to the Home Ministry representatives that labor organizations might occasionally support political parties or movements without necessarily becoming political parties, so long as political activity was not their primary purpose The Home Ministry was instructed that if unions temporarily devoted major attention to national political activity they would have to register, but they would not be required to report membership lists, as were political parties or associations

d *Control of Property of Dissolved Organizations* The provisions of SCAPIN 548 ordering the Government to take such action as necessary to prevent all transactions involving property of dissolved organizations required the issuance of several administrative directives to the Japanese Government. SCAPIN 548 provided for the impounding of all assets of dissolved organizations, including the books, records and files pertaining thereto, and the utilization of such property for the production of food, shelter or other necessities of life The directive required the Japanese Government to submit a program for the execution of its provisions, together with any laws, ordinances or orders to be issued, for the approval of SCAP.

(1) *Survey by Civil Property Custodian* Shortly after its establishment the Civil Property Custodian's Office initiated an extensive investiga-

tion to determine the character of the control exercised by the Japanese Government over such properties. This investigation revealed that:

(a) No reports had been available to General Headquarters as to the type and quantity of property involved, its location or its value.

(b) In general, the control exercised by the Japanese Government in the matter of custody of property of dissolved organizations had been such as to have made it extremely difficult to determine whether any actions taken had been in contravention of occupation policy.

(2) *CPC Administrative SCAPINS.* (a) *SCAPIN 1069-A.* CPC then recommended that an Administrative SCAPIN designed to rectify some of the difficult situations that had developed be transmitted to the Japanese Government. This memorandum was based upon SCAPIN 548. It ordered the Japanese to submit, within 60 days, an inventory of each item of property taken into custody by the Japanese Government in compliance with SCAPIN 548. The data were to be filed separately for each organization concerned. Another report was to be submitted of all properties utilized or to be utilized for the production of food, shelter or other necessities of life, including a statement showing the income derived therefrom and the uses to which such income had been devoted. It also forbade the future use of such property for any purpose whatsoever without authority or license issued by SCAP. This directive was issued to the Japanese Government on April 22, 1946 as SCAPIN 1069-A.

(b) *SCAPIN 1218-A.* On May 13, 1946, CPC issued SCAPIN 1218-A, a supplementary memorandum ordering the application of the above-mentioned directive to the Political Association of Great Japan, the Imperial Rule Assistance Association, the Imperial Rule Assistance Political Society and all of their affiliates, agencies and successors. In addition to the regular reports, this order required a separate account of all property transactions from December 7, 1941, through the dissolution date.

(3) *Japanese Administration of Property.* (a) *Amendments to the Basic Ordinance.* In accordance with these directives and the recommendations made from time to time by Government Section the Japanese Government prepared amendments to the initial implementing ordinances. These were discussed with Government Section on June 3, 1946. The draft ordinance incorporating these amendments was intended to clarify the scope of provisions in Imperial Ordinance 101 granting the Home Minister authority to seize properties held by dissolved or prohibited organizations. It was reviewed and approved except for a clause that would have given the Home Minister blanket authority for searches and seizures ". . . on the occasion of special necessity." The amended ordinances were promulgated on June 12, 1946.

(b) *Property of Military Clubs Seized.* On August 2, 1946, CPC issued SCAPIN 1889-A, directing the dissolution of the Japanese Army Officers' Club (Kaikosha), and the Navy Officers' Club (Suikosha) as ultranationalistic organizations with the meaning of SCAPIN 548. The Japanese Government was ordered to dissolve them immediately and include any successor organizations. Property transactions were to be separately reported from August 15, 1945, through date of dissolution.

(c) *Funds Placed in Custody.* On October 29, 1946, CPC directed the Japanese Government to take immediate action to deposit in the custody account of the Supreme Commander for the Allied Powers all cash on hand and all funds held in blocked accounts of all dissolved organizations and their successors that fell under SCAPIN 548. This directive, SCAPIN 2472-A, also ordered the Government to identify each deposit with the name and branch of the organization from which the funds were derived.

(d) *Licensing of Property by SCAP.* On August 14, 1947, in reply to a request for information from the War Department, the Civil Property Custodian reported that real properties of dissolved organizations had been licensed by

SCAP for use by governmental agencies and private and corporate persons. In cases of use by governmental agencies, no rental had been required, in order to alleviate, to some extent, the strained finances of the Japanese Government In the case of private and corporate persons, rental had been charged in accordance with existing Japanese regulations In addition, the Japanese Government had been directed to pay out of rental income, such expenses as were considered necessary properly to protect, preserve and maintain the property of the organizations affected In the case of property that had been used for governmental purposes, the Japanese Government had been responsible for maintenance, care and preservation of the property Examples of SCAP licensed and controlled business enterprises owned by dissolved organizations were cited as: the operation of the Dowa Hospital formerly belonging to the Dojin Kai, the utilization of property formerly belonging to the Great Japan Military Virtue Association (Dai Nippon Butokukai) for a police training school, and the construction of a 50-unit housing project by the Musashino Housing Association, an affiliate of an undesirable organization

(e) *Organizations' Assets Inventoried* Reports of inventory of dissolved organizations which had been received from 38 organizations having 7,112 branches showed assets of ¥112,295,417, following expense payments and disposals of ¥261,937,000 Other dissolved organizations had reported no assets principally because of voluntary dissolution and disposal of assets prior to the issuance of any directives during the period between August 15, 1945, and January 4, 1946 It was concluded that the studies then made of the expenses and disposals of the 38 organizations that had reported, revealed that a good portion consisted of legitimate liquidation expense, however, considerable intentional dissipation was evident. In addition there was evidence of deliberate concealment, particularly of real property. Such activities had been facilitated by the fact that each branch had acted in most cases independently of the central office

(4) *Final Disposition of Assets.* On February 17, 1948 representatives of the Government Section, CPC and other interested staff sections met to discuss a draft directive to the Japanese Government ordering the final disposal of assets formerly belonging to dissolved organizations. The directive to the Japanese Government which resulted from this conference was issued on March 1, 1948, as SCAPIN 1868, subject. "Disposition of Properties Belonging to Dissolved Organizations "[35] By its terms two previous administrative SCAPINS and two CPC memoranda for the Ministry of Home Affairs were rescinded SCAPIN 1868 transferred to the Japanese Government from SCAP custody all assets, negotiable instruments, accounts and properties once owned by dissolved organizations It declared null and void any transactions involving sale or transfer of such assets and directed the Government to investigate and recover any excessive liquidation expenses, gifts, loans and investments. This directive also ordered the establishment of an agency to handle the sale of property and specified certain conditions under which such sales would take place It stated that all funds accruing through these sales would be credited to the Japanese Government's foreign trade yen account and utilized for the implementation of the import-export program Provision was made in the directive for close supervision by SCAP over every phase of the property disposal program from the recovery of dissipated assets to the disbursements made by the board of trade out of the foreign trade account.

4. SCAPIN 548 and the Economic Purge

At a conference held in Government Section on June 3, 1946, Japanese Government representatives inquired whether organizations established purely for profit without any supple-

[35] Appendix B: 6d, SCAPIN 1868, March 1, 1948

mentary or subsidiary purpose were affected by the provisions of SCAPIN 548 if the organization's bylaws discriminated in any way against foreign nationals. This question was taken under consideration by Government Section and the Japanese were instructed to provide the names of all organizations which excluded foreign persons in Japan from trade, commerce, or the exercise of their professions, so that their nature could be considered in the formulation of a reply.

a. *Removal of Undesirable Officials.* On June 5 the Japanese Government representatives were given an outline of policy to be applied to economic organizations under SCAPIN 548. They were told that any organization, regardless of its apparent character, which fell under the provisions of Article 1 of the directive should be dissolved.* They were also informed that it had been determined that instead of a blanket exemption for all economic organizations from the effects of SCAPIN 548, certain groups, which would soon be defined, would be screened by the Home Ministry to determine whether Article 5 of the directive applied to them.** If it did the Home Ministry could submit a report to SCAP requesting exemption from dissolution for such organizations if they were bona fide economic organizations, provided that they had dismissed the objectionable personnel that had made them vulnerable. SCAP would then determine whether exemption should be granted or not. If exemption were denied, the Japanese Government would be required to dissolve the organization. Shortly thereafter a detailed statement was given to the Home Ministry representatives. It specified that, while no blanket authorization for the exemption of certain classes of organizations from SCAPIN 548 could be given, the principle of creating the least possible disturbance in Japan's legitimate economic life would be observed. To that end the responsibility of the Japanese Government in the application of SCAPIN 548 to nonpolitical organizations would be considered to be limited to the following program:

(1) Whenever *any* organization was discovered to be of a type specified in Article 1 of SCAPIN 548, no matter what its professed nature, it must be immediately dissolved.

(2) Certain categories of economic or cultural organizations would have to be screened in order to determine whether they were subject to Article 5 of SCAPIN 548. Temporarily, no other bona fide economic or cultural organizations, except as might be specified by SCAP, would have to be considered.

(3) Of the screened organizations, it was realized that some might be found subject to Article 5. In these cases the Japanese Government might ask exemption after all objectionable personnel who had been dismissed. If SCAP granted the exemption, there would be no further action taken against the organization under SCAPIN 548. If the request was refused, the organization would have to be dissolved in accordance with the directive.

b. *Screenable Categories.* The statement included details of the categories that were to be screened:

(1) Economic enterprises whose assets exceeded in fair market value 10 million yen or whose production or gross sales exceeded, for any calendar year since 1937, 1 million yen, or might in the future exceed those figures.

(2) Financial organizations such as the Bank of Japan, all ordinary and special banks, trust companies, savings banks, insurance companies, security exchanges, and in addition, those credit cooperatives, agricultural associations and loan companies whose assets exceeded 50 million yen.

(3) All chambers of commerce, control asso-

*Art. 1, Imperial Ordinance 101 of 1946, prohibited the formation of organizations whose purpose of the effect or whose purpose was defined in seven specified categories (see par 2, p 5 above).

**Art. 5, Imperial Ordinance 101 of 1946, prohibited the formation of any organization whose principal officials were career military officers or whose membership included more than 25 percent former members of a proscribed organization. (See par. 2a, p. 6 above.)

ciations, control companies, control unions, commerce and industry associations and councils, insurance associations, special companies, national policy companies, and other similar companies, associations and organizations associated with the economic life of Japan

(4) Quasi-governmental enterprises which were not clearly "government service"

(5) Any enterprise or agency which, since July 7, 1937, had engaged in exploitation of occupied areas, any system of private monopoly, the development of a totalitarian economy in Japan, or propagandizing for aggressive war

c *Integration with Economic Purge* Also specified was the order in which the organizations were to be screened First consideration was given to 16 specified banks, then to munitions companies, national policy companies, special companies, special corporations, control associations, control unions, control companies and agricultural cooperative associations While the Government was preparing to administer this program, it received instructions from SCAP to submit a comprehensive plan for extending the purge directive to local government and to economic enterprises The Government was already preparing to screen incumbents of these positions in order to eliminate undesirable persons and to forestall possible dissolution of these business organizations under SCAPIN 548 The criteria under which the organizations were to be screened *in compliance with* SCAPIN 548 necessarily corresponded in part with the criteria under which they were to be screened in compliance with SCAPIN 550 Thus the application of SCAPIN 548 to economic entities actually had more to do with the removal of undesirable personnel from the organizations in question than with the dissolution of the organizations themselves In order to avoid duplication of effort, therefore, the administration of this phase of the directive was carried out as part of the economic phase of the implementation of SCAPIN 550

5. Enforcement Agency Established

The Special Investigation Bureau operating under the Assistant Attorney General for Prosecution was established by law on February 15, 1948, and was ready to begin operation 2 months later The specific mission of this organization is to observe compliance with SCAPIN 548 and with the purge directive, SCAPIN 550 In the accomplishment of this mission the Bureau will insure that ultranationalistic societies and all other organizations banned by Imperial Ordinance No 101 of 1946 do not attempt to resume their proscribed activities To this end it will maintain a check on former leaders of dissolved organizations and on the existence of possible successor groups The Bureau will also observe and if necessary investigate societies which, though formed since the promulgation of the ordinance, may still be subject to dissolution under its terms because of their activities, membership, aims or purposes When on the basis of the Bureau's investigation a society is dissolved, the Attorney General is empowered to designate as a purgee " any person who has at any time been a founder, officer or director of, or occupied any post of authority in, or been an editor of any publication or organ of . " any organization dissolved under the terms of Imperial Ordinance No 101 of 1946 This power was formerly held exclusively by the Screening Committees which the Government set up to administer the purge program, but was later given to the Attorney General by amendment to Article VII of Imperial Ordinance No 101

SECTION III

The New Constitution of Japan

I. The Prewar Japanese State

When, on November 3, 1946, the Shin Kempo—the new or Showa Constitution of Japan—was formally promulgated, a complete reconstruction of the Japanese State was thus accomplished. A solid framework of organic law was thereby established to support the entire structure of the body politic. For the first time in Japanese history, a citizen of Japan could read in plain language the principles which guide and control the actions of every agency of his government. For the first time formal legal limitations were imposed upon the acts of government. For the first time the citizen was given a bill of rights.

The story of the steps by which this reconstruction was brought about makes a colorful chapter in the history of the Occupation. But its true significance cannot be understood without a preliminary examination of the old structure. It would, of course, take volumes to present a critical and authoritative picture of the Japanese state prior to the Occupation, a project far beyond the capacity of this work. All that can be done is to highlight the most important features, leaving to the student and historian the uncovering and interpretation of the intricate details.

A distinction must be made at the outset between the Constitution of the Japanese State and the so-called Meiji Constitution or Constitution of 1889. The actual constitution of the Japanese State was a formless mass of laws, rescripts, customs and traditions, of which the written law of the Constitution of 1889 was but one part. The situation in Japan was thus somewhat analogous to the British Constitution, based as it is on laws and customs having the force of law surrounding and controlled by a central time-honored institution, hoary with age, and wielding absolute authority—the Parliament. In Japan, the counterpart was the Imperial Institution—Tenno—the Emperor of Japan.

The Meiji Constitution itself was drafted by a small group of Japanese leaders headed by Prince Ito, after a thorough study of modern western constitutions,[1] particularly that of Prussia, which it most closely resembles. The men who prepared it knew exactly what they were doing. They were the key men of the movement that had brought about the Meiji Restoration, representing no popular movement but rather a small group of feudal lords who were determined to retain the power they had won to control Japan's destinies and to put Japan into a position wherein she could meet and treat with the western powers on a basis of equality. As Reischauer says, the Meiji

[1]Appendix C: 1, The Meiji Constitution.

Revolution "did not, like those in seventeeth century Europe, boil up from below. It was carefully planned by the top and forced upon the people by a relatively small but extremely vigorous group in control of the movement." (Reischauer, *Japan, Past and Present*, New York, 1946; p 117)

The constitution was but the culminating step in a series of reforms which resulted in the establishment of what was to all outward appearances a modern state. Actually, the whole structure was little more than a set for a puppet show The men who moved behind the scenes, who operated the wires, retained the thinking, the ambitions, the traditions of feudal Daimyo and samurai, the robes of which (*haori hakama*) they had previously worn.

Ito himself, in the preface to the third edition of his commentaries on the constitution, says: "The Imperial House Law is an expansion of the institutions bequeathed by the sacred imperial ancestors of successive ages, and is intended to be a guide to posterity for all time to come The Constitution of the Empire of Japan is a collection of the fundamental rules of the state, and lays down clear definitions *of the relations that ought to mutually exist between the sovereign and his people* " (Prince Hirobumi Ito, *Commentary on the Constitution of the Empire of Japan* (1889), Third Edition, Tokyo, 1931)

Between 1868 and 1890, a series of political reforms were put through, starting with the so-called Charter Oath of 1868 and closing with the promulgation of the imperial Constitution of 1889 The edicts or laws which accomplished these changes, together with traditions that still surrounded the exercise of the Imperial prerogative, constitute the basic law of Japan These include reorganization of the central government, establishment of prefectures, cities and towns, modernization of the police, the fiscal system, establishment of a postal system, etc Prefectural assemblies were created in 1879 and in 1881 a national assembly was proposed for 1890 The Imperial House Law, the Imperial Ordinance concerning the House of Peers, the Law of the Houses and the Law of Sinecure were all promulgated simultaneously with the Constitution and had equal force. The Privy Council had already been established as well as the extra constitutional bodies exercising fundamental authority and supported by state funds

Both the imperial oath on the occasion of the promulgation of the Constitution and the preamble and the Constitution itself contain significant statements The former declares

"[illegible]

hand, Our Imperial posterity may possess an express guide for the course they are to follow, and that, on the other, Our subjects shall surely be enabled to enjoy a wide range of action in giving Us their support, and that the observance of our laws shall continue to the remotest ages of time We will thereby give greater firmness to the stability of Our country and promote the welfare of all the people within the boundaries of Our dominions, and We now establish the Imperial House Law and the Constitution *These laws come to only an exposition of grand precepts for the conduct of the government* "

The preamble to the Constitution stated.

"Having, by virtue of the glories of Our Ancestors, ascended the Throne of a lineal succession unbroken for ages eternal, desiring to promote the welfare of, and to give development to the moral and intellectual faculties of Our beloved subjects, the very same that have been [illegible]

subjects and their descendants are forever to conform.

"[illegible]

the Constitution hereby granted."

The law of the Constitution sketched in outline form the framework of the structure and purported to give it legal authority It did no more than formalize the pattern Its disassociation from the actual operation of government

is clearly shown by the fact that it was never amended and never questioned. Indeed, no forum existed with jurisdiction to hear challenges on the grounds of constitutionality, although in practice the Privy Council performed the function of making certain that no action not in full conformity to the basic principles of national policy would be undertaken.

The first chapter treated of the Emperor. His dynasty was confirmed (Arts. 1 and 2). He was placed above the law (Art. 3). Sovereignty was reposed in him (Art. 4). "The Emperor exercises the legislative power with the consent of the National Diet" (Art. 5). He gave sanction to laws and orders (Art. 6). He might himself have issued ordinances and orders to carry out the laws, preserve peace and order, and deal with national emergencies and situations arising when the Diet was not in session (Arts. 8 and 9). He determined "the organization of the . . . administration, and salaries of all civil and military officers and appoints and dismisses the same" (Art. 10). The remainder of the chapter related to the exercise of specific powers such as declaring war, making peace, conferring titles of nobility, ordering amnesty, etc.

It was made quite clear in this chapter that the source of all political power and legal authority was the Emperor and that the administration of government was carried out in his name and by virtue of limited delegations. Law was the Emperor's word, expressed in one way or another, and a statute enacted by the National Diet was but one form of that expression. Ito said:

"The so-called executive power is not confined to the execution of the provisions of law. Now, in private life a predetermined purpose alone will prompt the general direction of an individual's actions; while, in facing the ever-varying phases of life, it is necessary, if he is to be saved from falling into error, that he exercises his thinking faculties to meet the requirements of the moment. Similarly, though the law is competent to lay down general rules for guidance in ordinary matters, it cannot be expected that it shall point out in every case the expeditious course to be taken in relation to every one of the multifarious forms of social activity. Were the executive confined to the execution of the law, the state would be powerless to discharge its proper functions in the case of absence of a law. Accordingly, ordinances are not only means for executing the law, but may, in order to meet requirements of given circumstances, be used to give manifestations to some original idea." (Hirobumi Ito, *Commentary on the Constitution of The Empire of Japan.* Trans. by Miyoji Ito, Third Edition, Tokyo 1931.)

Chapter II dealt with the "Rights and Duties of Subjects." At first glance, this chapter would seem to contain those basic guarantees of civic and civil liberty which constitute the very foundation of every western democracy. But instead of an outright guarantee—the fixing of an absolute right—each separate provision contained a limiting or conditioning clause which rendered the guarantee worthless, as many a Japanese subject and alien within Japan have found to their sorrow. Thus, Article 19 provided: "Japanese subjects may, according to qualifications determined in laws or ordinances, be appointed to civil or military or any public office equally." Article 23 provided: "No Japanese subject shall be arrested, detained, tried or punished unless according to law." Article 26 provided: "Except in the cases mentioned in the law, the secrecy of the letters of every Japanese subject shall remain inviolate." Article 29 provided: "Japanese subjects shall, within the limits of law, enjoy the liberty of speech, writing, publications, public meeting, and associations."

The term "according to law" and similar phrases are not the equivalents of "due process of law" as used in the United States. The law here referred to was no more than the expression of the Emperor's will, unhampered by any legal stricture, required to conform to no known standard. The true scope of this chapter was well stated by Ito to be "for the purpose of cherishing and of broadening the beautiful results of the Restoration as well as bearing witness thereto to all eternity." (Ito's *Commentary*, etc., p. 36.)

The third chapter was concerned with the imperial Diet. A bicameral system was estab-

lished, with the composition of the House of Peers fixed "by Imperial Ordinance " The House of Representatives was to be composed of "members elected by the people, according to the provisions of the law of elections." No other qualifications or standards were fixed in the constitution The chapter dealt in loose terms with organization and internal administration rather than jurisdiction and authority and the only significant provisions are those which establish clearly that it existed, could be convoked, could be dissolved, and undertook action only at the will of the Emperor The cabinet was not responsible to or even answerable to the Diet

On the contrary, it appears from chapter IV, "The respective Ministers of State shall give their advice to the Emperor, and be responsible for it " The only other provisions of this chapter, entitled "The Ministers of State and the Privy Council" are two articles, one of which required the countersignature of a Minister of State on laws, imperial ordinances and imperial rescripts, and the other of which provided that "The Privy Councillors shall, in accordance with the provisions for the organization of the Privy Council, deliberate upon important matters of State, when they have been consulted by the Emperor " Certainly, this left the whole subject in a most flexible condition.

Chapter V, dealing with "The Judicature," made it quite clear that there was no independence of the judiciary in Japan Judges were appointed, served, and were disciplined "according to law " There were no provisions defining the jurisdiction or authority of the courts, save one which required that "no suit at law, which relates to rights alleged to have been infringed by the illegal measures of the administrative authorities   shall be taken cognizance of by a court of law " In this connection, it is of interest to note what Ito had to say.

"By the expression illegal measures of the administrative authorities,' it must be understood that no suit can be brought against those measures that have been carried out in conformity with law or with the functionary power of the office in question. No one, for example, shall be allowed to institute a suit touching a measure, which is in conformity with a law placing restriction upon the right of property for the sake of the public good The expression 'rights alleged to have been infringed' points to the evident conclusion that mere damage to one's interest, though it can become the ground of a petition, begets no right of bringing an administrative litigation When for example, administrative authorities shall have fixed the course of a line of railroad, according to an established process, the local inhabitants may remonstrate, thinking that it would be more advantageous for them to have its course fixed in some other direction Such a remonstrance would relate to interest and not to right So the inhabitants may petition the competent authorities, but will not be allowed to bring an action before the Court of Administrative Litigation " (Ito's *Commentary*, etc , pp 111–12)

Under chapter VI, matters of public finance were dealt with. Although several of the provisions introduced innovations in Japanese administrative procedures, the loopholes were many and large Article 62 provided that the imposition of a new tax or the modification of the rates of an existing one must be by law but "all administrative fees   shall not fall within the category of the above clause " Furthermore, "the raising of national loans and the contracting of other liabilities to the charge of the National Treasury, except those that are provided in the budget, shall require the consent of the imperial Diet " It was provided that an annual budget shall be presented to the Diet, but of this Ito said, (p 121)

"There is one thing that demands explanation in this place, and that is the fact that in most countries a budget

This same chapter provided for sufficiently broad escape clauses to nullify any restrictions seemingly imposed upon the executive Expenditures in excess of budget appropriations had to receive subsequent Diet approval—an implied authorization to exceed, rendered all the broader by the absence, in constitution or law of any requirement for ratification within a set period. The same is true of accounting requirements. Expenditures of the imperial household

did not require Diet approval. "Already fixed expenditures based by the Constitution upon the powers appertaining to the Emperor, and such expenditures as may have arisen by the effect of law, or that appertain to the legal obligations of the Government, shall neither be rejected nor reduced by the imperial Diet, without the concurrence of the Government." If no new budget was passed, the appropriations of the previous budget held good. These and several other provisions make it perfectly clear that nothing in the Constitution was intended to impose any real restriction or limitation upon the powers of the Government.

The final chapter dealt with several matters, of which the most important provided that amendments shall be submitted only by the Emperor and must be approved by two-thirds vote in each House. This provision has been the subject of considerable discussion from time to time, the major question being whether the Diet could do anything more than pass or reject, in toto, an imperial proposal for amendment. In connection with the adoption of the revised constitution and the question of preserving legal continuity, the whole subject has been exhaustively treated by Alfred Oppler, Chief, Courts and Law Division, Government Section, in his memorandum to the Chief, GS, dated August 25, 1945, entitled: "Powers of the Diet with Respect to Constitutional Amendments under the Meiji Constitution."[2] The remaining provisions relate to validation of existing law, etc.

The law of the Constitution of 1889 itself makes quite clear that it is to be regarded as one of several simultaneous enactments and not as a fundamental organic law. This is a most important consideration which must be fully understood to appreciate the true significance of constitutional revision. The Meiji Restoration brought into power in Japan the leaders of several divergent groups whose common meeting ground was opposition to the age-hardened ways and thinking of the Tokugawa Shogunate and adherence to the aim of moulding Japan into a strong, unified national state. The adherents of the young Emperor, the rebellious young samurai, the elder statesmen who saw both the advantages and dangers of western culture and the threat of western imperialism, and the recently risen merchant class which foresaw immense wealth and influence in achieving such a goal—all banded together. Their aims were accomplished with spectacular success. A series of legal and constitutional reforms were put through, the most outstanding of which, though by no means the final one, was the so-called Meiji Constitution. Every measure was carefully planned and skillfully executed.

The result was a state that gave all the appearances of a constitutional monarchy in the European style, with a representative national legislative assembly, codified laws, what appeared to be a constitutional bill of rights, a centralized system of national and local administration based upon law. Uniformed officials appeared throughout Japan, exercising a control over the life of every community that inspired awe in western eyes, where the ideals of keeping the peace, maintaining public health, providing for public welfare tended to outweigh spiritual values.

The formal structure of the Japanese state satisfied the most exacting requirements of the Western World, and the growth to maturity of Japan within the course of half a century was considered miraculous. Japan, by the start of the twentieth century, had achieved the enviable status of a modern state and was welcomed into the council chambers of the great powers. But, true though it may be that in the fifty-odd years following the Meiji Restoration, Japan underwent an amazing transformation from an isolated, primitive, feudal autocracy, essentially agrarian in character, into a modern industrial totalitarian oligarchy, the changes in the political field

[2]See Appendix C: 15, for complete text.

at least were more ostensible than real.

On the record, Japan was governed by a Cabinet of Ministers of State acting for and in the name of the Emperor, whose chief spokesman was the Lord Keeper of the Privy Seal and whose official council was the Privy Council, a national representative legislative assembly divided into a senior House of Lords, representing the aristocracy and vested interests, and a junior House of Representatives, elected on the basis of a limited male franchise While centralized to the highest degree, the administration of government was carried out through several echelons feeding out of the national ministries. A complete and functioning system of courts existed, under the control of the Ministry of Justice, it is true, but nevertheless, adjudicating the laws, which had been almost entirely codified

In point of fact, the real nature of the Japanese State had been little altered. The law of the Constitution was little more than window dressing Not only were several important official agencies of state entirely extraconstitutional, but all operations of government were administered by clique and counterclique, by family group and military cabal and through all the hidden channels of intrigue, duress, bribery, and seduction The four great ruling groups were, of course, the aristocracy, the military, the Zaibatsu and the bureaucacy. The oldest and most exalted was unquestionably the aristocracy, representing the actual imperial family The Knights of the Round Table—the Defenders of the Faith—were the military, closely allied by ties of blood kinship and marriage with the aristocracy While the imperial household itself was in practical effect the greatest of the "money gang," the 10 great financial families provided the support, the sinews, and the lifeblood for the rulers and they, too, were closely intertwined by marriage and blood, and bound to allegiance by heritage, for they were the descendants of the greatest of the local barons. The operators, the administrators, were the members of the bureaucracy. Many served from time to time in Zaibatsu firms Some ascended to the peerage All the groups were closely tied together by the iron bonds of mutal necessity for one could not long survive without the other; and they were united in their loyalty to the Imperial institution and their ambitions for Japan

Within this inner circle, the field was honeycombed by cells representing clique and counterclique, conspiring, sabotaging, bickering, contending for favor, exercising duress, but always united in two basic aims, perpetuation of the system and support of each other from assaults from without and from below The real government operated behind closed doors and entirely outside the law The Japanese Government has been notorious for its failure to engage in actual operations Under the Japanese system, the national government to a very large degree and the various lower echelons to a proportionately lesser degree, did not handle directly the normal functions and operations of government The job of a government official was to supervise He sat at a desk and gave or withheld approval. Operations were and are carried out by private or semiprivate organizations subsidized by the Government and frequently officered by governmental officials. Thus, in the labor field we have the vicious labor boss or contract labor system. In every municipality, licenses were issued and fees collected usually through the Oyabun System which made a contribution to the city. Public welfare was administered by private institutions receiving lump-sum subsidies. Economic controls were handled through control associations. In fact, the only public agency operating directly and through a fully developed official organization was that of the police.

Under this system, and indeed one of the underlying reasons for its perpetuation, the diffusion of responsibility became so great as to make it well-nigh impossible to pin down the real actor. While this situation may not

did not require Diet approval. "Already fixed expenditures based by the Constitution upon the powers appertaining to the Emperor, and such expenditures as may have arisen by the effect of law, or that appertain to the legal obligations of the Government, shall neither be rejected nor reduced by the imperial Diet, without the concurrence of the Government." If no new budget was passed, the appropriations of the previous budget held good. These and several other provisions make it perfectly clear that nothing in the Constitution was intended to impose any real restriction or limitation upon the powers of the Government.

The final chapter dealt with several matters, of which the most important provided that amendments shall be submitted only by the Emperor and must be approved by two-thirds vote in each House. This provision has been the subject of considerable discussion from time to time, the major question being whether the Diet could do anything more than pass or reject, in toto, an imperial proposal for amendment. In connection with the adoption of the revised constitution and the question of preserving legal continuity, the whole subject has been exhaustively treated by Alfred Oppler, Chief, Courts and Law Division, Government Section, in his memorandum to the Chief, GS, dated August 25, 1945, entitled: "Powers of the Diet with Respect to Constitutional Amendments under the Meiji Constitution."[2] The remaining provisions relate to validation of existing law, etc.

The law of the Constitution of 1889 itself makes quite clear that it is to be regarded as one of several simultaneous enactments and not as a fundamental organic law. This is a most important consideration which must be fully understood to appreciate the true significance of constitutional revision. The Meiji Restoration brought into power in Japan the leaders of several divergent groups whose common meeting ground was opposition to the age-hardened ways and thinking of the Tokugawa Shogunate and adherence to the aim of moulding Japan into a strong, unified national state. The adherents of the young Emperor, the rebellious young samurai, the elder statesmen who saw both the advantages and dangers of western culture and the threat of western imperialism, and the recently risen merchant class which foresaw immense wealth and influence in achieving such a goal—all banded together. Their aims were accomplished with spectacular success. A series of legal and constitutional reforms were put through, the most outstanding of which, though by no means the final one, was the so-called Meiji Constitution. Every measure was carefully planned and skillfully executed.

The result was a state that gave all the appearances of a constitutional monarchy in the European style, with a representative national legislative assembly, codified laws, what appeared to be a constitutional bill of rights, a centralized system of national and local administration based upon law. Uniformed officials appeared throughout Japan, exercising a control over the life of every community that inspired awe in western eyes, where the ideals of keeping the peace, maintaining public health, providing for public welfare tended to outweigh spiritual values.

The formal structure of the Japanese state satisfied the most exacting requirements of the Western World, and the growth to maturity of Japan within the course of half a century was considered miraculous. Japan, by the start of the twentieth century, had achieved the enviable status of a modern state and was welcomed into the council chambers of the great powers. But, true though it may be that in the fifty-odd years following the Meiji Restoration, Japan underwent an amazing transformation from an isolated, primitive, feudal autocracy, essentially agrarian in character, into a modern industrial totalitarian oligarchy, the changes in the political field

[2] See Appendix C: 15, for complete text.

at least were more ostensible than real.

On the record, Japan was governed by a Cabinet of Ministers of State acting for and in the name of the Emperor, whose chief spokesman was the Lord Keeper of the Privy Seal and whose official council was the Privy Council, a national representative legislative assembly divided into a senior House of Lords, representing the aristocracy and vested interests, and a junior House of Representatives, elected on the basis of a limited male franchise While centralized to the highest degree, the administration of government was carried out through several echelons feeding out of the national ministries. A complete and functioning system of courts existed, under the control of the Ministry of Justice, it is true, but nevertheless, adjudicating the laws, which had been almost entirely codified

In point of fact, the real nature of the Japanese State had been little altered The law of the Constitution was little more than window dressing. Not only were several important official agencies of state entirely extraconstitutional, but all operations of government were administered by clique and counterclique, by family group and military cabal and through all the hidden channels of intrigue, duress, bribery, and seduction The four great ruling groups were, of course, the aristocracy, the military, the Zaibatsu and the bureaucracy. The oldest and most exalted was unquestionably the aristocracy, representing the actual imperial family The Knights of the Round Table—the Defenders of the Faith—were the military, closely allied by ties of blood kinship and marriage with the aristocracy While the imperial household itself was in practical effect the greatest of the "money gang," the 10 great financial families provided the support, the sinews, and the lifeblood for the rulers and they, too, were closely intertwined by marriage and blood, and bound to allegiance by heritage, for they were the descendants of the greatest of the local barons. The operators, the administrators, were the members of the bureaucracy. Many served from time to time in Zaibatsu firms Some ascended to the peerage All the groups were closely tied together by the iron bonds of mutal necessity for one could not long survive without the other, and they were united in their loyalty to the Imperial institution and their ambitions for Japan.

Within this inner circle, the field was honeycombed by cells representing clique and counterclique, conspiring, sabotaging, bickering, contending for favor, exercising duress, but always united in two basic aims, perpetuation of the system and support of each other from assaults from without and from below. The real government operated behind closed doors and entirely outside the law The Japanese Government has been notorious for its failure to engage in actual operations Under the Japanese system, the national government to a very large degree and the various lower echelons to a proportionately lesser degree, did not handle directly the normal functions and operations of government The job of a government official was to supervise. He sat at a desk and gave or withheld approval. Operations were and are carried out by private or semiprivate organizations subsidized by the Government and frequently officered by governmental officials. Thus, in the labor field we have the vicious labor boss or contract labor system. In every municipality, licenses were issued and fees collected usually through the Oyabun System which made a contribution to the city. Public welfare was administered by private institutions receiving lump-sum subsidies Economic controls were handled through control associations In fact, the only public agency operating directly and through a fully developed official organization was that of the police.

Under this system, and indeed one of the underlying reasons for its perpetuation, the diffusion of responsibility became so great as to make it well-nigh impossible to pin down the real actor. While this situation may not

have been so observable at the village level, where practical necessities required direct intervention, the further you got from the village, the wider the separation between government and the people became and the larger grew *the field in which a species of political middlemen operated.* It is this feature which is so completely contrary to democratic principles. The Government is insulated from the people and can at one and the same time disclaim responsibility for corruption and oppression and secretly participate in the illegal benefits which may accrue. Public officials, furthermore, enjoying the support and protection of their sponsors or superiors, are secure and can ignore the outcries and demands of the plain people. The prime example is, of course, the position of the man who wears the imperial chrysanthemum. As the agent—the representative—of the Emperor, his actions could not be questioned, for that would reflect upon His Imperial Majesty. Of course, that was no protection from the lightning which struck from above. As a result, every official and employee so conducted himself as to remain in the good graces of his superiors, official or otherwise.

It has been stated that the basis of all political authority is the acquiescence of the individual member of the state. However obtained, it is the vital ingredient. It is the people who, in the last analysis, determine what form their government takes. The rulers of Japan were well aware of this. The knowledge of that basic truth guided their conduct and influenced their every action. It was because of this knowledge that they enlarged Shinto into a state religion that glorified the Japanese state as symbolized by the Emperor and portrayed the sublimity of unquestioning obedience to an ever loving and ever watchful temporal and spiritual ruler, the divine parent of an earthly family, by this means deepening and strengthening the already powerful unifying force of Emperor worship. It was because they were afraid that acquiescence might be withdrawn that they developed a police system which inquired into every intimate detail of the private life of every subject, that watched, regulated and oppressed, that acted swiftly and summarily whenever danger to the state appeared to threaten—acted without regard for human rights and with no concern for law. It was because of this knowledge that they fed the people's minds with grandiose schemes of world conquest and the promise of all the abundance of land and goods which that would bring.

This, then, was the Japanese state, wherein the individual was completely submerged, wherein the entire authority of government was claimed by and exercised by a self-selected and self-perpetuating few, a state, the basic philosophy of which was the glorification of an institution from which an individual could claim no rights, to which an individual owed complete allegiance. The Imperial Japanese Government arrogated unto itself the positions of guides of the people's morals, keepers of the people's conscience and arbiters of the people's destinies. The people were not consulted.

II. The Basis for Revision

The surrender of Japan and its occupation by the forces of the victorious Allied Powers presented a new problem in international law. The surrender was, of course, total, but no annexation or destruction of the country was contemplated. On the contrary, the existing government was left in power, to operate under, and subject to, the control of the occupant, for the purpose of accomplishing certain political and economic reforms that would ensure a peaceful Japan once the military forces had been withdrawn.

A familiar incident of military occupations of the past has been either the outright annexation of the country occupied or the establishment of a regime regarded as sympathetic toward the occupant. Particularly was this so with the advances of the Axis Powers, where puppet governments were invariably set up, manned by native "Quislings." In no case, however, did this involve major organic changes imposed by the occupant. Even during the First World War, although legal conflicts were many, the basic domestic laws of the occupied country were left untouched. Article 43 of the Hague rules provides that.

"The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all measures in his power to restore and ensure, as far as possible, public order and safety, *while respecting, unless absolutely prevented, the laws in force in the country*"

It has very generally been accepted that the military occupant exercises military authority over the occupied country but does not have full rights of sovereignty. How far total surrender, made with full knowledge of the intentions of the victors, would operate to change this rule has never been established. Notwithstanding, there existed very valid reasons why constitutional revision by military fiat was highly undesirable. In the first place, any such attempt would be certain to rouse the opposition of the people of the conquered country, no matter how beneficient the proposed changes might seem In the second place, on more than one occasion, the Allied Powers have pledged their adherence to the principle of self-determination It would, indeed, have been strange if the principal proponents of democracy—inherent in which is the right of free choice of one's own form of government—had undertaken to impose their own system of government upon the conquered country

The basis for governmental reform—constitutional revision—in Japan by the Japanese people, was laid in the Potsdam Declaration, announced by the principal Allied Powers at Potsdam, Germany, in July, 1945.[3] This instrument declared that:

[illegible]

and that:

"We do not intend that the Japanese shall be enslaved as a race or destroyed as a nation, but stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners. The Japanese Government shall remove all obstacles to the revival and [illegible]

* * * * * * * *

"The occupying forces of the Allies shall be withdrawn from Japan as soon as [illegible]

In other words, it was clearly stated at the outset that the Allied Powers expected the Japanese people to undertake their own reforms. Pursuant to this clear declaration, the United States Government prepared an initial postsurrender policy directive for the guidance of General MacArthur in his occupation of Japan as Supreme Commander for the Allied Powers.[4] This document stated.

"The ultimate objective of the United Nations with respect to Japan is to foster conditions which will give the greatest possible assurance that Japan will not again become a menace to the peace and security of the world and will permit her eventual admission as a responsible and peaceful member of the family of nations Certain measures considered to be essential for the achievement of this objective have been set forth in the Potsdam Declaration These measures, among other things, include [illegible] with continuing control over Japan's capacity to make war, the strengthening of democratic tendencies and processes in governmental, economic and social institutions, and the encouragement and support of liberal political tendencies in Japan. The United States desires that the Japanese Government conform as closely as may be to principles of democratic self-government, but it is not the responsibility of the occupation forces to impose

[3]Appendix A 3, Potsdam Declaration, July 26, 1945.

[4]Appendix A: 11, United States Initial Postsurrender Policy

on Japan any form of government not supported by the freely expressed will of the people.

* * * * * * *

"Where action is necessary in order to carry out the surrender, you have the right to act directly from the outset. Otherwise, subject always to your right as the Supreme Commander to take direct action in the event of the unwillingness or failure of the Emperor or other Japanese authority to act effectively, you will exercise your supreme authority through the Emperor and Japanese governmental machinery, national and local. The policy is to use the existing form of government in Japan, not to support it. Changes in the direction of modifying the feudal and authoritarian tendencies of the government are to be permitted and favored. In the event that the effectuation of such changes involves the use of force by the Japanese people or government against persons opposed thereto, you as Supreme Commander should intervene only where necessary to ensure the security of your forces and the attainment of all other objectives of the occupation. You may, as circumstances require, exercise your supreme power and authority in the fullest measure including the imposition of direct military government. If it becomes necessary to impose direct military government in any part of Japan, you will immediately thereafter advise the Joint Chiefs of Staff. You will not remove the Emperor or take any steps toward his removal without prior consultation with and advice issued to you through the Joint Chiefs of Staff.

* * * * * * *

"By appropriate means you will make clear to all levels of the Japanese population the fact of their defeat. They must be made to realize that their suffering and defeat have been brought upon them by the lawless and irresponsible aggression of Japan, and that only when militarism has been eliminated from Japanese life and institutions will Japan be admitted to the family of nations. They must be told that they will be expected to develop a nonmilitaristic and democratic Japan which will respect the rights of other nations and Japan's international obligations."

Although, some time subsequently, two informal papers relating to governmental reform in general and the Emperor in particular were forwarded to the Supreme Commander for his information, no further instructions were issued from Washington.

Given the major responsibility of encouraging the development of democratic institutions, the Supreme Commander was faced with two alternative methods of going about it. He clearly recognized at the outset that no political reform that did not encompass revision of the constitution would be worth serious consideration. The problem was whether to permit and encourage the slow growth of local democratic institutions and political maturity and at some later time to advise the development of an organic law that would merge and reflect the new institutions, or to promote the early and drastic overhaul of the basic law and then build on that new foundation. Too early and too drastic a change might well carry the stamp of alien rule and as well stunt the growth of native institutions. On the other hand, the slow natural growth of native political institutions and the gradual development of political maturity in the Japanese people would require an occupation lasting certainly long enough for the generation then in primary school to grow to manhood. While in September 1945 it appeared reasonably certain that the Occupation would be maintained until the Allied Powers had determined that the conditions of the Potsdam Declaration had been complied with, no one could be sure what changes in thinking would take place. Balancing all the factors, it seemed much the wisest course to urge upon the Japanese Government the prime importance of immediate constitutional revision.

The great advantage of immediate revision of the basic law was that it would give to the Japanese people a goal at which to shoot, as well as a solid foundation on which to build. Under conditions existing in September 1945 there could be no assurance that a reactionary cabinet, privy council or Emperor would not, overnight, wipe out all the gains that might be achieved. Precisely, this had been done in the early thirties, bringing to a sharp and bitter close the nearest approach Japan had made to political liberalism. This compelling reason alone made the decision of General MacArthur an eminently wise one.

During the course of the first 4 months, the Supreme Commander on several occasions conveyed to the Japanese Government his concern in the matter. It was his basic conception of the Occupation mission that to the fullest possible extent the Japanese should be permitted and encouraged to do the work and undertake

the reforms themselves, under the general guidance and supervision of the Occupation forces This concept, certainly a new and liberal one in the annals of military occupations, arose out of his firm belief that that which was imposed by authority or superior military force not only bore the taint of oppression but would be the antithesis of true democracy as well. In September, then, Prince Higashi-Kuni, Prime Minister of the so-called Surrender Cabinet, was informed that the Supreme Commander regarded revision of the constitution as a matter of first importance Shortly thereafter, Prince Konoye, then Minister without portfolio in the Higashi-Kuni Cabinet, had occasion to meet General MacArthur and sought advice from him on the subject of governmental reform. This brief meeting was followed by an informal conference between the late George Atcheson, Jr , United States Political Adviser to the Supreme Commander, and Prince Konoye, at which the matter of revision of the Constitution was explored in some detail * At this conference, Ambassador Atcheson outlined for the Japanese those points which SCAP considered to be basic These were

a. Extension of the authority of the House of Representatives, particularly over the budget.

b Removal of the veto power of the House of Peers

c. Establishment of the principle of parliamentary responsibility

d Democratization of the House of Peers

e. Abolition of the veto power of the Emperor

f Curtailment of the Emperor's authority to legislate by means of rescript and ordinance.

g Provision for an effective bill of rights

h Establishment of an independent judiciary

i. Provision for impeachment and recall of public officials.

j Obliteration of the influence of the military in the government

k. Abolition of the Privy Council

l Provision for amendments by popular initiative and referendum

When, in mid-October, the Cabinet of Baron Shidehara replaced that of Higashi-Kuni, General MacArthur pointedly advised the new Prime Minister that the reforms which Japan must undertake "will unquestionably involve a revision of the Constitution " Shortly thereafter, Dr Joji Matsumoto was appointed to head a committee charged with the express responsibility for drafting a revised constitution [5] By this time, the subject was acquiring some little publicity, and as the winter progressed numerous bodies and individuals undertook to set down on paper their own ideas for such revision The Matsumoto committee worked behind closed doors, but the political parties and other interested persons and groups of persons did not hesitate to make public their views

On the part of General Headquarters, SCAP, the Government Section, established by General Order No 8 of 1945, dated October 2, 1945, had the function of investigating, studying and advising the Supreme Commander "with respect to the structure of civil government in Japan."[6] A study of governmental reform was undertaken by the Section, including informal studies of the problem of constitutional revision, but no formal contacts were made with the Japanese Government and no detailed plan of action was prepared

Since it has been apparent throughout the

[5]Appendix C 2, List of members of the so-called Matsumoto Committee.

[6]Appendix G 8a(1) General Order No 8, October 2, 1945

*A curious confusion arose in the mind of Prince Konoye as a result of these two interviews He shortly thereafter made the unwarranted assumption that General MacArthur had personally charged him with the work of revision of the Constitution, whereas in fact he was being spoken to not only in the most general terms but merely as a responsible member of the Japanese Cabinet The Supreme Commander was finally forced to clarify the situation with an express repudiation of Konoye s allegations

on Japan any form of government not supported by the freely expressed will of the people.

* * * * * * *

"Where action is necessary in order to carry out the surrender, you have the right to act directly from the outset. Otherwise, subject always to your right as the Supreme Commander to take direct action in the event of the unwillingness or failure of the Emperor or other Japanese authority to act effectively, you will exercise your supreme authority through the Emperor and Japanese governmental machinery, national and local. The policy is to use the existing form of government in Japan, not to support it. Changes in the direction of modifying the feudal and authoritarian tendencies of the government are to be permitted and favored. In the event that the effectuation of such changes involves the use of force by the Japanese people or government against persons opposed thereto, you as Supreme Commander should intervene only where necessary to ensure the security of your forces and the attainment of all other objectives of the occupation. You may, as circumstances require, exercise your supreme power and authority in the fullest measure including the imposition of direct military government. If it becomes necessary to impose direct military government in any part of Japan, you will immediately thereafter advise the Joint Chiefs of Staff. You will not remove the Emperor or take any steps toward his removal without prior consultation with and advice issued to you through the Joint Chiefs of Staff.

* * * * * * *

"By appropriate means you will make clear to all levels of the Japanese population the fact of their defeat. They must be made to realize that their suffering and defeat have been brought upon them by the lawless and irresponsible aggression of Japan, and that only when militarism has been eliminated from Japanese life and institutions will Japan be admitted to the family of nations. They must be told that they will be expected to develop a nonmilitaristic and democratic Japan which will respect the rights of other nations and Japan's international obligations."

Although, some time subsequently, two informal papers relating to governmental reform in general and the Emperor in particular were forwarded to the Supreme Commander for his information, no further instructions were issued from Washington.

Given the major responsibility of encouraging the development of democratic institutions, the Supreme Commander was faced with two alternative methods of going about it. He clearly recognized at the outset that no political reform that did not encompass revision of the constitution would be worth serious consideration. The problem was whether to permit and encourage the slow growth of local democratic institutions and political maturity and at some later time to advise the development of an organic law that would merge and reflect the new institutions, or to promote the early and drastic overhaul of the basic law and then build on that new foundation. Too early and too drastic a change might well carry the stamp of alien rule and as well stunt the growth of native institutions. On the other hand, the slow natural growth of native political institutions and the gradual development of political maturity in the Japanese people would require an occupation lasting certainly long enough for the generation then in primary school to grow to manhood. While in September 1945 it appeared reasonably certain that the Occupation would be maintained until the Allied Powers had determined that the conditions of the Potsdam Declaration had been complied with, no one could be sure what changes in thinking would take place. Balancing all the factors, it seemed much the wisest course to urge upon the Japanese Government the prime importance of immediate constitutional revision.

The great advantage of immediate revision of the basic law was that it would give to the Japanese people a goal at which to shoot, as well as a solid foundation on which to build. Under conditions existing in September 1945 there could be no assurance that a reactionary cabinet, privy council or Emperor would not, overnight, wipe out all the gains that might be achieved. Precisely, this had been done in the early thirties, bringing to a sharp and bitter close the nearest approach Japan had made to political liberalism. This compelling reason alone made the decision of General MacArthur an eminently wise one.

During the course of the first 4 months, the Supreme Commander on several occasions conveyed to the Japanese Government his concern in the matter. It was his basic conception of the Occupation mission that to the fullest possible extent the Japanese should be permitted and encouraged to do the work and undertake

the reforms themselves, under the general guidance and supervision of the Occupation forces This concept, certainly a new and liberal one in the annals of military occupations, arose out of his firm belief that that which was imposed by authority or superior military force not only bore the taint of oppression but would be the antithesis of true democracy as well. In September, then, Prince Higashi-Kuni, Prime Minister of the so-called Surrender Cabinet, was informed that the Supreme Commander regarded revision of the constitution as a matter of first importance. Shortly thereafter, Prince Konoye, then Minister without portfolio in the Higashi-Kuni Cabinet, had occasion to meet General MacArthur and sought advice from him on the subject of governmental reform. This brief meeting was followed by an informal conference between the late George Atcheson, Jr , United States Political Adviser to the Supreme Commander, and Prince Konoye, at which the matter of revision of the Constitution was explored in some detail * At this conference, Ambassador Atcheson outlined for the Japanese those points which SCAP considered to be basic These were

a. Extension of the authority of the House of Representatives, particularly over the budget.

b Removal of the veto power of the House of Peers

c. Establishment of the principle of parliamentary responsibility

d Democratization of the House of Peers

e Abolition of the veto power of the Emperor.

f Curtailment of the Emperor's authority to legislate by means of rescript and ordinance

g Provision for an effective bill of rights

h Establishment of an independent judiciary.

i. Provision for impeachment and recall of public officials

j Obliteration of the influence of the military in the government

k. Abolition of the Privy Council

l. Provision for amendments by popular initiative and referendum

When, in mid-October, the Cabinet of Baron Shidehara replaced that of Higashi-Kuni, General MacArthur pointedly advised the new Prime Minister that the reforms which Japan must undertake "will unquestionably involve a revision of the Constitution " Shortly thereafter, Dr Joji Matsumoto was appointed to head a committee charged with the express responsibility for drafting a revised constitution [5] By this time, the subject was acquiring some little publicity, and as the winter progressed numerous bodies and individuals undertook to set down on paper their own ideas for such revision The Matsumoto committee worked behind closed doors, but the political parties and other interested persons and groups of persons did not hesitate to make public their views

On the part of General Headquarters, SCAP, the Government Section, established by General Order No. 8 of 1945, dated October 2, 1945, had the function of investigating, studying and advising the Supreme Commander "with respect to the structure of civil government in Japan "[6] A study of governmental reform was undertaken by the Section, including informal studies of the problem of constitutional revision, but no formal contacts were made with the Japanese Government and no detailed plan of action was prepared

Since it has been apparent [illegible]

---

[5]Appendix C 2, List of members of the so-called Matsumoto Committee

[6]Appendix G 8a(1) General Order No 8, October 2, 1945

*A curious confusion arose in the mind of Prince Konoye as a result of these two interviews He shortly [illegible] assumption that General MacArthur had personally charged him with the work of revision of the Constitution, [illegible] to not only in the most general terms but merely as a responsible member of the Japanese Cabinet. The Supreme Commander was [illegible] to clarify the situation with an express repudiation of Konoye s allegations

whole period of revision that there existed no basic disagreement among the Allied Powers with respect to the basic principles that constitutional revision must be encompassed, it might be well to discuss these principles before proceeding to a study of the record of what actually took place. It has already been pointed out that the so-called Meiji Constitution provided none of the safeguards or the guarantees customarily found in the organic law of a modern state. The Japanese state, as has so often been pointed out, operated as a government of men rather than of laws. All authority stemmed from the top—a supreme ruler upon whom every Japanese subject depended, to whom he looked, for whom he lived. The agents of that ruler governed with complete despotism. Their authority could not be challenged for two excellent and eminently practical reasons. There was no forum sufficiently exalted to assume jurisdiction, for that would be to permit questioning His Imperial Majesty, and there were no laws in the western sense of the word to define in clear and unequivocal terms the relationships between the subject and his government.

The basic ingredients of government in a democratic society are well established. There must be a body of rules readily available to and easily understood by all, equally applicable to all and adopted and altered according to procedures which assure full opportunity for participation by all members of the community and which are sufficiently rigid to guarantee reasonable stability of those rules. There must be a body of administrators chosen by and from among the individual members of society and answerable to them. The right of every individual freely to choose and freely to retire his agents of government is an absolute and inalienable one in a democracy. There must be an independent and impartial tribunal for the trial of disputes between individuals and between individuals and their government. And there must be effective guarantees against those threats to individual freedom, to human existence and to the public welfare which human society has come to recognize as threats to civilization itself.

The state—the body politic—has neither existence nor authority nor justification beyond the collective hopes and desires of the individual members. The citizen—the participating member of the society—owes no duty or allegiance to the state as a separate entity but only to society as the aggregate of its individual human members—as the projection of himself. Neither the government nor its agents can be immune to his challenge. At every point in the administration of government at which the individual considers that his rights or his liberties have been infringed, he is entitled as of absolute right to ask: "By what authority is this done?"; he is entitled to seek redress or remedy through the channels provided by law—the ballot box or the court of justice.

The sovereignty of the people, the supremacy of law, the absolute guarantee of basic rights and liberties, the independence of the courts, the recognition of the individual—these must of necessity be the fundamental requirements. Through what machinery they are provided, how they are to be obtained and assured, presents a problem the solution of which may differ widely among men. Institutions cannot be transplanted in toto but must either be developed or modified to fit the conditions, the understanding, the capacities of the people they are to serve. It is, perhaps, most fortunate that here in Japan the ground had already been prepared to some extent. The history of modern Japan is one of a steady, if disorganized and inarticulate, pressure from the Japanese people toward greater participation in their government. The pressure was in part responsible for the Meiji Restoration itself and the semblance of parliamentary government which resulted from it. It forced the subsequent adoption of restrictive and oppressive measures again and again, and yet, notwithstanding those measures, it brought Japan to the verge of a responsible parliamentary form of government in the

1920's No one who has dealt with the Japanese Government during the course of the Occupation, or who has come to know anything of the Japanese people, could help being impressed by their tremendous urge for, and the widespread knowledge of, the institutions of popular government. This in itself augured well for the future of constitutional revision.

Of course, one serious problem loomed large—the treatment of the Emperor and the Imperial Institution. Kokutai—national polity—means, to the Japanese, the unity of people and Emperor in a family relationship that is immutable and indestructible. The doctrine is not to be found expressed in its entirety in any document. It is not a concept of law though it might be considered one of sovereignty. The Japanese man in the street cannot conceive of a state without the Imperial Institution. It gives lustre to the nation and binds all parts together. It is not a question of the divinity of the Emperor. Actually, he was never considered "divine" in the western sense, but rather as the spiritual as well as the temporal ruler of the people. In an *Interpretation of the New Constitution*, written by Hideo Shuto, Tatsu Sato, Yoshihide Watanabe, Isao Sato, and Kenichi Yamaura, with the blessing of the Yoshida Cabinet, and published on November 3, 1946, it was said:

"The expression 'National polity' can be interpreted in various ways, but it is adequate to define it as the fundamental characteristics of the nation. Interpreted in this way, the national polity is the basis of the existence of the state and the national polity shares the destiny of the state. Therefore, if the national polity is changed or lost, the state loses its existence at once. Even if a new state is established, it must be recognized that the old and the new states will be different. Considering the national polity of our country in that light, the fundamental peculiarity of our country throughout her existence in the relative part of her history is the unshakeable, solemn fact, forming the basis of the existence of JAPAN, that the relation between the Emperor and the people is deeply rooted in the hearts of the people. The people have the Emperor as a focal point of adoration and are united through him." (*Interpretation of the New Constitution*, Tokyo, Legislative Bureau of the Cabinet, November 3, 1946, with introductory statements by Prime Minister Shigeru Yoshida, State Minister Tokujiro Kanamori, and Chief Cabinet Secretary Joji Hayashi.)

This concept of the position of the Emperor—the understanding of which is basic to a proper understanding of the old Japanese Constitution—presented grave difficulties of draftsmanship for anyone attempting to define the legal position of the Emperor under a new constitution based upon democratic principles. It must be remembered that the language—the legal phraseology—with which we are accustomed to describe the meaning and offering of democracy has been fashioned and colored by time and usage to convey precise pictures we can easily recognize. The words and characters used by the Japanese to portray the same ideas themselves have meanings peculiar to Japanese culture and ideology and, thus, are only with great difficulty adaptable to these new uses. Furthermore, by time-honored custom, the Japanese used a written law as a precept merely—a statement of principle, to be given implementation and meaning by those charged with its application or interpretation.

Another consideration was the question of legal continuity. It was obvious that substantial revision, if not complete substitution, would be necessary in order to establish the legal basis for democracy in Japan. At first blush, this would seem to require something more than mere amendment of the Meiji Constitution, which could be accomplished only through the initiative of the Emperor and consent of the Diet. Since the Potsdam Declaration required a government to be established through the "freely expressed will of the Japanese people" and since it was generally accepted that the existing constitution permitted no opportunity for freely expressed popular approval, somewhat of a dilemma was presented. At the same time, from a purely legalistic point of view, no machinery existed for complete revision within the framework of existing organic law and the establishment of such machinery could well be considered improper interference by the military occupant in violation of the Hague rules.

This question was given serious consideration by both the Supreme Commander and the

Japanese Government, as the actual revision progressed. It was resolved by the Japanese Government in favor of action by the Emperor in proposing an Imperial project for amending the existing document, as provided in article 73. Legalists might argue that this method prevented amendment of the Imperial proposal in the Diet and restricted the authority of the Diet to approval or disapproval, but this view was discarded. No attempt to amend the Meiji Constitution had ever been made and no precedents existed. It was considered that it was for the Diet to establish its own rules in this matter.

It is of interest to note that this method of constitutional revision through the device of amending the old is not unknown in the United States. Within recent years, the State of Georgia undertook complete revision of its constitution under the leadership of Governor Arnall. The method used was to call a committee of experts together to prepare a draft of a completely new constitution. When this had been prepared and reviewed, it was presented to the State legislature as an amendment to the existing constitution and adopted as such. The legality of this procedure has not been brought into question.

Before taking up the actual work of revision, as undertaken by the Japanese Government and assisted by SCAP, it seems appropriate to consider for a moment the various private and unofficial proposals for revision of the Meiji Constitution, for these proposals are of considerable value in indicating the trend of Japanese thinking as well as the nature of the influences bearing upon the government itself. It has already been pointed out that the subject acquired early widespread popularity, and there can be no doubt that the discussion of this subject throughout the length and breadth of Japan did much to prepare the Japanese people for the actual and official draft.

III. Unofficial Proposals for Revision

1. Preliminary Discussions

The most striking feature of the early stages of constitutional revision was the extent to which sweeping changes in the way of liberal and democratic reforms were proposed by the newly formed political parties as well as by private groups and organizations. Every party had its own draft for a revised constitution and all of the newspapers contained long and serious discussions not only of the need for revision but of the new provisions considered necessary as well. Not even the imperial institution—the Emperor system—was omitted from consideration, though most people approached this subject somewhat timidly. Nevertheless, the size of the group favoring a republican form of government was by no means small or entirely recruited from radical ranks.

In discussing the various proposals for revision that appeared during the early months of the occupation, it must be remembered that we are dealing with concepts and principles rather than exact statutory provisions. The Meiji Constitution itself was conceived to be little more than a statement of guiding principles. The proposals put forth were invariably limited to a set of general rules, and frequently the language used was so vague as to admit of several and contradictory interpretations. The submergence of the individual in the group, the close personal relationship between master and servant, the patriarchal nature of all Japanese society made it inevitable that greater reliance should be placed on the spoken words and obvious actions of the ruler than on exact written words. The widespread illiteracy and the extremely difficult written language made this result even more certain.

Thus, even today, many a Japanese is prone to regard the exact, specific language of his new constitution as no more than a precept to be interpreted and applied for his benefit according to the wishes and intention of the officials in power.

One particular problem bothered nearly everyone who tried his hand at constitutional revision. National polity, or *kokutai*—it is sometimes translated "national policy"—is considered by the Japanese to be a peculiar Japanese concept.

It is rare indeed that any two Japanese will agree on the meaning of the term It appears almost impossible of explanation in language familiar to the lawyer or political economist Says Fujii·

"In this way of the Tenno is found innate the sacredness of Tenno, whom his subjects look up to in adoration as divine Sovereign Their faith is that the Tenno, being a descendant of the Sun Goddess, is a living god—a man-god—and that therefore he practices the way of the Tenno, i e , the way of the Sun Goddess Such a Tenno is indeed sacred, if ever there was anyone sacred The Japanese Constitution has in article III The Tenno is sacred and inviolable ' This certainly points out, as in the western fashion, the great principles of the inviolability of the sovereign power and the non-responsibility

testimony to it All this is but natural, since, in Japan, as already reiterated, the successive Tenno, who are divine descendants of the Sun Goddess, the founder, and therefore living gods, have each without interruption succeeded to the sacred and inviolable Imperial Throne, and have exercised bountiful benevolence over the people through all ages in their ever-illustrious rule over the land, i e the way of the Tenno "—Shinichi Fujii, *The Essentials of Japanese Constitutional Law*, Tokyo, 1940, chapter III, pp 47–49 *

The problem was to draft an organic law that would provide legal and political security for the individual and still not upset the traditional concept of the unity of the Emperor and the people and the inviolability of the Emperor The problem was solved most easily by the official group, which proposed initially no change that would impair the Emperor's prerogatives or encroach upon his authority

But the independent groups were, for the most part, more courageous. In this, as in other issues, they either attempted a modification or boldly jettisoned the doctrine of national polity in favor of a more democratic principle. So, again, the legal position of the Emperor gave trouble, with proposals ranging all the way from retention of the Emperor as the actual chief of state to abolition of the Emperor system The Privy Council gave no trouble There was complete unanimity in favor of its abolition Abolition of the peerage was generally favored. The legislative power was to be vested in the Diet, with the weight of authority thrown to the House of Representatives and a complete overhauling of the House of Peers In this connection, it is interesting to note the trend toward a corporate or functional upper house, a point that was raised and seriously debated in connection with the adoption of the official draft

2. Progressive Party's Proposals

Most conservative of all the proposals for revision, the Progressives' draft offered few startling changes but nevertheless showed a wholesome leaning toward liberalization. Sovereignty remained in the Emperor, to be *exercised by him with the consent of the Diet*, the Cabinet and the courts. A functional House of Councillors would replace the House of Peers, but the House of Representatives would exercise the real power, being authorized to override the upper house. The Diet would fix its own sessions, with a standing committee to act during recess periods. The Emperor would appoint the Prime Minister after consultation with the presidents of both houses, and both Prime Minister and Cabinet would be responsible to the Diet. The proposals for guarantees of civil liberties [illegible]

*See also *Interpretation of the New Constitution* by Hideo Shuto and others, Tokyo, 1946

ures necessary to maintain peace and order, while no mention at all was made of economic or judicial protections. However, judicial independence was suggested, with the whole judicial power vested in regular courts of law and, interestingly enough, the power of judicial review given to the Supreme Court. No other unofficial draft contained this proposal. Limited budgetary controls were suggested, with a provision for a 3 months' executive budget based on the previous year's appropriations, in the event of the failure of passage of the annual budget. Amendments are initiated by the Diet.

Briefly, then, the Progressives proposed many structural changes without a basic organic alteration of the existing Japanese State. The source of all authority, the heart and center of the structure was still the Imperial Institution. The machinery for the administration of government and for protection and participation of the people, under the benevolent protection of the Emperor, was modernized and given a more Anglo-American than continental appearance. Certainly, greater flexibility was proposed and greater opportunities for the growth of true parliamentary government. What was lacking, however, was any clear guarantees either of individual liberty or of the democratic process. Most outstanding was the proposal for exercise of the power of judicial review by the Supreme Court.

3. Liberal Party's Proposals

The Liberals were more ambitious, though on the primary question of sovereignty and the exercise of the rights thereof, they sided with the Progressives. Sovereignty, they said, would reside in the Japanese state, and the Emperor would combine in himself the rights of sovereignty. However, the prerogatives of the Emperor would be substantially curtailed, he would act only with the "assistance" of his Ministers of State and he would have neither legal nor political responsibility. The House of Councillors would be a stabilizing agency composed of men of learning and experience, but the balance of power would rest with the House of Representatives, which would be given primacy in budget discussions. A standing committee was recommended for periods of recess. The Progressives made no mention of the Prime Minister but did propose that the Cabinet system be provided for in detail in the Constitution. Civil liberties would be established by law, with some suggestion of economic freedoms guaranteed as well. The independence of the judiciary would be assured. The Diet could initiate constitutional amendments.

Most significant of the Liberal proposals was the recommendation that the Emperor be divorced from all legal and political responsibility. It must be pointed out, however, that this was a two-edged sword. It signified not only that the Emperor would not exercise the powers of government but that he would not be answerable through legal or political process. Aside from this proposition, the Liberal platform differed little from that of the Progressives.

4. Social Democrat Party's Proposals

Here we see substantial progress toward the secure establishment of popular government. Sovereignty would reside in the state ("the National Community including the Emperor"), but the rights of sovereignty would be exercised mostly by the Diet and only in part by the Emperor. The imperial prerogatives would be purely ceremonial. A functional House of Councillors would be established but be inferior to the House of Representatives. The Diet would never be closed but a special body was recommended for periods of recess. The Diet could be dissolved by popular plebiscite. The Prime Minister would be appointed by the Emperor after consultation with the Presidents of both houses, and the Cabinet would be responsible to the Diet.

An extensive bill of rights, including some economic guarantees, was provided for Judicial independence was proposed The Diet would amend the constitution by majority vote with a two-thirds quorum

Here we have emerging the shape and structure of a government of the people, with recognition of the place of the individual. The Diet becomes the supreme organ of state power Civil liberties are to be guaranteed absolutely The Emperor is removed from the exercise of political power The balance of power has here been shifted

5. Communist Proposals

The Communists left unanswered many questions, preferring to rest upon a strong position on general principles Sovereignty would be reposed in the people, to be administered by the Diet The Emperor system would be abolished The Diet would be responsible to the people and would select the members of the cabinet which itself would be answerable to the Diet An extensive bill of rights was recommended, with particular attention to economic guarantees

6. Private Groups' Proposals

In general, private groups favored reposing sovereignty in the people to be exercised by the "Cabinet" or the "Government" The function of the Emperor would be to perform rituals and ceremonies A functional upper house was generally favored, with the balance of power in the House of Representatives Here, as with the political parties, there was a strong leaning toward extended Diet sessions, with the Diet determining when it should convene and recess and with some sort of standing committee provided for during periods of recess Generally, the Prime Minister would be appointed upon the recommendation of the presidents of both houses, though one man Dr Iwasaburo Takano, proposed an elected president. Takano, who was the leader of a private group striving for a republican form of government, appears to have been the only person favoring the American system, for all other groups and individuals recommended a cabinet jointly responsible to the Diet Only with the private groups were there detailed and extensive recommendations for absolute guarantees, social, political and economic All recommended an independent judiciary Financial controls were generally neglected, although one group specifically urged Diet control of imperial household expenditures As for constitutional amendments, the proposals ranged from legislative enactment to popular plebiscite

Most striking omission from all the private and unofficial proposals was any provision for guarantees against unreasonable searches and seizures or any of the other protections thrown about the individual in connection with accusations of and prosecution for crimes There are probably two reasons for this No presumption of innocence has every existed in Japan—or in any other oriental country The individual who became involved with the state took his chances There might be security against his involvement, but once the involvement had occurred, he had no standing One avoided open conflict, whether with one's neighbors or with the authorities Again, it was probably felt that the provisions of independent judges would result in improved trial procedure and additional protection for the parties to the trial

Another curious omission was any suggestion either of the extension of the suffrage or the admission of women to equal political status with men. In September 1945 only males over 25 could vote Only one private group proposed that the suffrage should be extended to all adult men and women, while in all of the proposals for extension of civil, social and economic freedoms, the removal of the constitutional and legal disabilities under which women suffered was not once mentioned

Another notable omission was any recommendation for local autonomy. This is not easily understood. The heavy hand of the Home Ministry had long been felt throughout the prefectures. It was common experience that no community was too small to escape the interference of the National Government in its local affairs. While it is unthinkable that any form of state, i.e. prefectural sovereignty should be established, nevertheless it is difficult to conceive how so important a matter could have escaped the consideration of those interested in reform and reorganization. Perhaps the answer is that they were too deeply indoctrinated with the idea of centralization or it was considered that local self-government was no more than a detail that could be left to the National Diet.

Of the points emphasized by George Atcheson, political adviser to the Supreme Commander, in his conference with Prince Konoye, all but four were covered in a reasonably satisfactory fashion by the unofficial groups.* The four on which no proposals had been made were: Curtailment of the Emperor's authority to legislate by means of rescript and ordinance, provision of initiative and recall of public officials, obliteration of the influence of the military, and provision for constitutional amendment by initiative and referendum. Even then, the first two of these four were at least touched on, if not fully provided for. In sharp contrast to these progressive proposals in unofficial circles, the Shidehara Cabinet was making heavy weather of the question.

IV. *The Matsumoto Draft*

The Constitutional Problem Investigation Committee was established under the chairmanship of Dr. Joji Matsumoto by Prime Minister Shidehara in October 1945 and at once took up its task. It was given no instructions by the Cabinet, the leadership of State Minister-without-Portfolio Matsumoto being counted upon to promote the work. The committee worked steadily for 3 months, consulting frequently with the Cabinet. Although the deliberations of the committee have never been made public, there is reason to believe that no clear-cut agreement was ever reached. Dr. Matsumoto, a thoroughgoing conservative who believed most fervently in the maintenance of the Emperor system and the doctrine of National Polity, unquestionably dominated the work. Early in January, he proposed two drafts, which were then debated in detail and voted on, article by article. On February 1, 1946, *Mainichi Shimbun* reported that tentative agreement had been reached in the committee on January 26, and published what was purported to be the draft plan.[7] Subsequently, two documents were informally submitted to the Supreme Commander, one entitled "Gist of the Revision of the Constitution" and the other "General Explanation of the Constitutional Revision drafted by the Government."[8] No formal submission of a detailed draft was ever made.

The "Tentative plan," the "Gist" and the "Explanation" when studied together, throw a clear light on the political views of the Matsumoto committee. The proposals for revision do not go beyond the most moderate of modifications in the language of the Meiji Constitution. The basic nature of the Japanese state is left unchanged. As the "Explanation" itself says:

[7]Appendix C: 3, Tentative Revision of the Constitution (A).

[8]Appendix C: 6, Gist of Revision of the Constitution submitted to the Supreme Commander.

*The Atcheson-Konoye conversation had not been published in Japan.

"The fundamental spirit of the present draft revision

The proposed revision lags far behind even the most conservative of the unofficial drafts. It is quite apparent that what was hoped was that liberalization of the language of the Meiji Constitution would be acceptable to SCAP, leaving the real Constitution in its loose and flexible form, open to such application and interpretation as the ruling groups might see fit to apply

The comment of the Tokyo newspaper *Mainichi* on March 3, 1946 is illuminating

"Since the formation of the Cabinet, the Government, led by Minister of State Matsumoto, has very carefully investigated constitutional revision, and at several Cabinet meetings there has been deliberation on the matter However, since Matsumoto and the various Cabinet Ministers have been unable to reach any fundamental agreement, constitutional revision has reached an impasse . various Cabinet Ministers openly stated their opinions. Matsumoto, opposed to them, refused to give an inch on the two pet theories he holds They are

"1 While articles 1 to 4 may be changed more or less [illegible]

Reconciliation between the various proposals being impossible, comment will be restricted to the "Gist" and the "Explanation", with only such reference to the other proposals as seems pertinent Says the "Explanation"

"In the task of drafting a revision of the Constitution [illegible]

that Japan has been reigned over by a line of Emperors unbroken from the very beginning of our national history, there is no room for doubt but that an overwhelming majority of our people are strongly desirous of retaining the system This is the reason why the draft revision proposes to maintain a system wherein the Emperor exercises sovereign power, rather than to adopt a republican form of government with a president at its head, or so-called 'presidential democracy' "

Whatever the reasons, the Emperor system was retained intact Proposed changes in chapter 1 of the Meiji Constitution (the Emperor) affect 8 of its 17 Articles. The empire is still to be reigned over by a line of emperors unbroken. Succession to the imperial throne is still to be governed by an imperial house law not under the Constitution. The Emperor becomes supreme and inviolable rather than sacred and inviolable. Articles 4, 5, and 6 which repose sovereignty in the Emperor and provide for the exercise by him of the rights of sovereignty, remain unchanged. Article 7, authorizing the convocation and dissolution of the Diet by the Emperor, is changed only to provide that he cannot dissolve the Diet twice for the same cause Article 8, authorizing urgent imperial ordinances, would require "reference" to a permanent committee of the Diet Article 9 is reworded without change of meaning Article 10 is left untouched (the emperor determines the organization of the different branches of the administration, etc) In Articles 11 and 12, "Army and Navy" become "armed forces" and their peacetime composition is to be determined by law The war and treaty-making authority of the Emperor under Article 13 is made subject to Diet consent save in urgent circumstances, when only the permanent committee needs to be consulted Article 15, relating to the conferring of titles of nobility, etc , is changed to authorize conferring marks of honor only Articles 14, 16, and 17 remain unchanged

It is significant that the authority and the powers of the Emperor are not altered or weakened in any real way. Such changes as are here proposed relate to procedure only The imperial institution remains unimpaired. Moreover, it still operates under an Imperial House Law which is not required to be enacted by the Diet

Chapter 2 of the Meiji Constitution dealt with the rights and duties of the people. This was supposed to be a bill of rights, but such rights as were defined were not guaranteed, but made subject to necessary provisions of law. The Matsumoto draft, if anything, reduces the rights and increases the duties of the people.

No absolute guarantees whatsoever are provided. The "Explanation" offers a curious confusion.

"Although there are provisions in the laws currently in force which are calculated to afford considerable protection . . . in practice not only were they (the people's rights)not duly respected but at times seriously infringed upon. Such a situation was due to the enactment of evil laws. . . .

"In the draft revision, therefore, it is proposed to insert a general provision to the effect that . . . no restrictions of whatever nature may be imposed upon the freedom and rights of Japanese subjects except by law."

The changes in chapter 3 affecting the Diet are minor except for the substitution of a House of Senators for the House of Peers. A provision which shows clearly how serious an effort was being made to accomplish any real liberalization is that which empowers the House of Representatives to override the House of Senators by enacting a bill three times in succession by at least two-thirds vote of all the members. So, too, with chapter 4—the Cabinet. Provision is made for a responsible Cabinet but only to the extent of individual or several responsibility. No mention is made of how the Prime Minister is to be appointed nor is any attempt made to define the jurisdiction or authority of the Cabinet. Other than requiring that the organization of the Privy Council shall be determined by law, nothing is said of this most important organ of government.

The Meiji Constitution provisions relating to the judiciary are left untouched except for one progressive recommendation—that jurisdiction of litigations involving administrative matters be transferred from the Court of Administrative Litigation to the courts of law. In notable contrast to the recommendations of the several political parties and many of the unofficial groups, no effort has been made to provide for the independence of the judiciary.

More attention has been paid to financial matters, but even here the improvement is more apparent than real. The House of Senators may not increase a budget item passed by the House of Representatives. Expenditures of the imperial household, *other than those of the imperial court*, shall require the consent of the Diet annually. The Diet may reject or reduce budget items relating to powers exercised by the Emperor under the constitution even without the consent of the "Government." Expenditures from the reserve fund shall be referred to the permanent committee of the Diet, as must emergency financial measures. Where, under the Meiji Constitution, in the event of the failure of the Diet to adopt the budget, the Government could operate under the budget of the preceding year, the proposal is put forward to permit the Government to prepare a tentative budget and operate under it until the regular budget has been approved.

Under the Meiji Constitution, constitutional amendments could be introduced by the Emperor alone. The Matsumoto proposal broadens this provision to permit the introduction of amendments by any member of either house with the concurrence of one-half the members thereof. The Emperor is required to sanction such an amendment when enacted by the Diet.

Lacking from the Matsumoto draft are two important provisions. There is no mention whatsoever of local self-government—no suggestion of assurance that the people of the several communities will be given any measure of participation in their own local political affairs. Furthermore, there is no provision making the Constitution the supreme law of the land. This omission is, of course, fatal, since it leaves the real Japanese state exactly as it was, and excludes from the operation of law the various extraconstitutional agencies which have been so characteristic a feature of the Japanese political structure.

The "Explanation" is an illuminating document. It illustrates clearly the Japanese approach toward problems which involve the possible alteration of a state of affairs heretofore found good. Faced with the issue of actual, comprehensive revision of the Meiji Constitution, the Matsumoto committee took refuge behind a few vague and substantially meaningless changes in phraseology coupled with an

elaborate attempt at justification of their failure to go further. One quotation will suffice·

"The words 'army' and 'navy' will be struck out of the Constitution and they will read simply 'armed forces '

"Even if the time should arrive when, upon completion of Allied Occupation, Japan is permitted to rearm, the armed forces would be of a very limited scope such as are necessary for the maintenance of peace and order in the country Moreover, the nation on its own part should harbor no intention of having again any army or navy such as it had before Accordingly it is proposed to drop the words 'army' and 'navy' "

The situation that obtained at the end of January 1946 with respect to revision of the Meiji Constitution was to a large degree a reflection of the general political picture The Supreme Commander had determined to leave in the hands of the Japanese the fullest possible responsibility for accomplishing reorganization and liberalization of their government and establishment of the beginnings of a democratic state The Government and the people had been fully advised of their responsibilities The people, through informal and unofficial channels, had shown a heartening response to these changes On the other hand, the Government, failing completely to respond to the obvious desires and demands of the people of Japan, confirmed in their allegiance to the traditional principles and time-honored customs of the past, indicated little desire to undertake the work, and attempted to resolve the issue with a show of words and a bow in the direction of the West That they understood the problems involved cannot for a moment be questioned Their skill in fashioning facades involving no structural remodeling was notable On February 3 the *Nippon Times* contained this statement "Thus, it is seen that all drafts made by political parties and others are demanding the democratization of the Constitution, but the Government plan, drafted by Dr Matsumoto, has shown no intention to democratize it There, if the Government insists upon the adoption of the Matsumoto draft, public opinion will rise against it "

V. SCAP'S Answer to Matsumoto Draft

General Headquarters became aware, through various informal channels, that the debate of a draft was reaching a crucial stage in the Matsumoto committee by mid-January On January 28 the *Nippon Times* published, in a front-page box, the report that the committee had given approval to a draft for revision of the Constitution On February 1 the *Mainichi* published its version of the "tentative draft" with the comment that

"The Government is speeding up its decision to submit the draft of the revised constitution to the Allied Headquarters and the Far East Committee (Far Eastern Commission), and urgently introduced it to the extraordinary Cabinet meeting with State Minister Matsumoto's explanation article by article on January 30 Ministers expressed their opinions actively and debated on it at the extraordinary Cabinet meeting on January 31 "

That same day (February 1) the informal "Gist" and "Explanation" were submitted to the Supreme Commander, and Foreign Minister Yoshida requested of the Chief, Government Section, an informal conference to consider the proposals for Tuesday, February 5 On the night of February 1, Wataru Narahashi, Chief Secretary of the Cabinet, publicly denied that the *Mainichi* draft represented the work of the Matsumoto committee * On February 2, a representative of the Foreign Office requested postponement of the conference Yoshida had asked for A postponement was granted for 1 week It was made clear that any discussion would be on a purely informal and off-the-record basis, but in the light of the sharp public reaction against the alleged Matsumoto draft it was deemed necessary to reorient the

*According to both *Kyodo* and the *Nippon Times*, Dr Matsumoto discussed proposals for revision in language strikingly similar to that of the *Mainichi* Draft

Cabinet on the principles which the Supreme Commander deemed basic.

On February 1, upon being informed of the tentative conference set for February 5, General MacArthur instructed Brigadier General Whitney, Chief, Government Section, to prepare a detailed answer, rejecting the Matsumoto draft, for submission to the Japanese Government at the conference. The work of preparing this rejection was undertaken by Governmental Powers Branch that afternoon. Further consideration, however, was given the matter on the 2d and 3d of February by the Supreme Commander and he finally came to the conclusion that the most effective method of instructing the Japanese Government on the nature and application of these principles he considered basic would be to prepare a draft constitution embodying those principles. This decision he communicated to Brigadier General Whitney the same day, advising him that, while he extended full discretion to Government Section, he wished three major points to be incorporated in the draft. These were (from General MacArthur's own notes):

I

"The Emperor is at the head of the State.

"His succession is dynastic.

"His duties and powers will be exercised in accordance with the Constitution and responsible to the basic will of the people as provided therein.

II

"War as a sovereign right of the nation is abolished. Japan renounces it as an instrumentality for settling its disputes and even for preserving its own security. It relies upon the higher ideals which are now stirring the world for its defense and its protection.

"No Japanese Army, Navy, or Air Force will ever be authorized and no rights of belligerency will ever be conferred upon any Japanese force.

III

"The feudal system of Japan will cease.

"No rights of peerage except those of the Imperial family will extend beyond the lives of those now existent.

"No patent of nobility will from this time forth embody within itself any National or Civic power of Government.

"Pattern budget after British system."

This decision was communicated by General Whitney to the three officers of his Section responsible for constitutional and legal reform, Col. Charles L. Kades, Chief, Public Administration Division; Lt. Col. Milo E. Rowell, Chief, Legal Branch; and Comdr. Alfred R. Hussey. These three explored the subject and the problems presented and outlined plans for carrying forward the work. A tentative organization was recommended consisting of a steering committee and a series of special committees, each assigned the task of preparing a specific section for report to and discussion with the steering committee.

The tentative plans were presented to General Whitney on Monday, February 4, and approved by him. Immediately thereafter a meeting of the Section (exclusive of the Korean Division) was called. General Whitney conveyed to the assembled group the instructions of the Supreme Commander and directed that the work be undertaken at once, with precedence over all else. The doors to Government Section were to be closed and the strictest secrecy was imposed. It is noteworthy that no suggestion of the nature of the work was divulged during the full month of operations.

The organization having been completed, the work was started. Certain general problems were discussed and tentatively decided upon. It was agreed to use Japanese terminology and forms wherever possible and to resort to the phraseology of Anglo-Saxon law only when necessary to make the meaning clear. The question of whether to follow the British system of the supremacy of the legislature or the American system of checks and balances was discussed, with the sense of the meeting leaning toward the British system, it being closer to the Japanese pattern. The power of judicial review came up for consideration. Here there became evident a decided split in opinion, a large group favoring a limited power of review, with the Diet having the authority to override the Supreme Court. Although such a provision would be more consistent with true parliamentary system, the majority favored granting to the Supreme Court the absolute

power of review over questions of constitutional interpretation

At the first meeting, it was made known that General MacArthur favored a unicameral legislature and the general opinion was strongly in support of this position, primarily because it was felt that the House of Peers should be done away with, and nothing should be established that in any way resembled it Furthermore, there was strong objection to any form of a functional or corporate upper house, a favorite proposition of the Japanese No one felt, however, that this was a basic principle

Two related questions proved troublesome It was suggested that establishing the independence and elevating the authority of both the Diet and the courts of law would weaken the Executive to the point of impotence, particularly in the case where the Diet had passed a vote of no confidence and forced the Cabinet to resign. It was agreed, however, that some provision should be made to the effect that the government-in-being should continue to operate until a new Diet had been elected or until a new Cabinet had been chosen The selection of a Prime Minister should be made the first order of new business, but current and pending matters should continue to be disposed of to prevent a complete break-down Some suggestion was made looking toward writing into the document a detailed specification of the powers of the Executive and how they should be exercised, but this was not agreed to

That the Meiji Constitution would be followed in general structure, chapter headings and the like was well understood It was unanimously agreed, however, that the pattern of that Constitution in defining with precision and particularity the powers, rights and authority of the Emperor should be completely reversed Sovereignty should be reposed squarely in the people, to be exercised by the three branches of government as the agents of the people The Emperor's role would be that of a social monarch, no more General Whitney then advised that while no explicit mention need be made of the United Nations Charter, its principles should be borne clearly in mind in drafting the new Constitution

There was little difficulty over the provisions relating to the Emperor, the discussions between the steering committee and the special committee drafting the proposals being generally concerned with details A proposal giving the Emperor the right to "confirm the judgments of the court of law" was stricken The word "reign" was deleted on the ground that in Japanese it carried the connotation of "govern " Specific reference to designated imperial officers was deleted

The committee on constitutional amendments recommended a provision restricting the right of amendment for 10 years on the ground that there was grave danger that the document would be completely emasculated were the reactionaries to come into power The steering committee ruled, however, that the writing of a liberal constitution must be premised upon the existence of a responsible electorate and that, to the greatest extent possible, the Japanese should be given the right to develop their own institutions This provision was substantially liberalized in the final draft

Impeachment caused some little debate, but it was finally decided by the steering committee that impeachment should be restricted to removal of members of the judiciary It was agreed that impeachment as a general technique for the dismissal of public officials was cumbersome and time-consuming, that the Prime Minister should be removable by a vote of nonconfidence, that he should be able to remove his State Ministers at will, that civil servants should be removable according to processes established by law, that the Diet should be able to eject its own members and that elected officials might be recalled It was recommended that the chapter on local government include a provision for the forfeiture of office by a local official convicted of a serious crime.

The draft of the bill of rights caused consid-

erable debate. The committee on this subject proved staunch defenders of the individual and his right to life, liberty, and the pursuit of happiness. The differences, however, were not of opinion on principle but of the legal practicality or effectiveness. One provision resulted in a deadlock that was finally resolved by General MacArthur, who ordered its deletion from the final draft. This was an article prohibiting an amendment to the constitution impairing or altering the provisions of the bill of rights. An article providing for the compensation of persons suffering loss through illegal official action was stricken after some discussion. A prohibition on political activity by religious organizations was deleted as dangerous in the way of giving the government the right to interfere. The steering committee and the committee on civil rights differed sharply on the extent to which social guarantees should be included, the latter standing firm for a detailed specification. General Whitney eventually resolved the issue in favor of a general statement.

The proposals of the committee on the Diet met with few objections. Some discussion developed over the lack of an executive veto, but it was finally decided that under the parliamentary system, the Diet must have the decisive power. Several matters of detail were discussed at length, but the general principles established by this committee were agreed to by the steering committee.

The draft prepared by the committee on the Executive met no such easy sailing. There was irreconcilable disagreement in the committee itself, a minority holding out for vesting the power of appointment of a Prime Minister in the Emperor and for vesting the executive power in the Prime Minister rather than in the Cabinet collectively. Basically, the argument was for a strong executive, responsible to the Diet it is true, but with the authority to dissolve the Diet in the event of disagreement. The steering committee finally ruled that, while the Prime Minister should be empowered to appoint and dismiss Cabinet Ministers at will, the Cabinet should be collectively responsible to the Diet and, in the event of a vote of nonconfidence, should either resign or dissolve the Diet. The problem of disagreement in the Diet over the selection of a Prime Minister was discussed at length, but no solution reached. Some concern was expressed over the provision authorizing the Cabinet to issue cabinet orders, but it was agreed that the restrictive nature of the wording was sufficient to prevent abuse or arrogation of power.

The provisions with respect to the judiciary caused some discussion within the steering committee, one member considering it unwise to make the courts too independent. He viewed with some concern the danger of a judicial oligarchy. It was ruled, however, that the provision inserted which gave the Diet the power of reviewing decisions on constitutional questions by two-thirds vote, except where the bill of rights was affected, provided the necessary safeguard. Election and recall of judges was proposed, but it was finally decided to go no further than provide for popular review of Supreme Court appointments at regular intervals. It was agreed that it was necessary to repose the whole rule-making power in the Supreme Court to preserve its independence from the executive.

Considerable debate ensued over the necessity for extensive budgetary controls. A provision that appropriations should not be permitted in excess of available income was strongly opposed but eventually accepted. A provision for a temporary budget was deleted. In its place, a reserve fund was provided, which could be drawn upon to cover unforeseen contingencies. Furthermore, it was felt that the pressure of need of funds to run the Government would tend to force settlement of disputes. A provision was inserted prohibiting the subsidization of religious and other similar activities and also prohibiting the subsidization of educational and benevolent enterprises not under public control.

The report of the Committee on Local Government was debated at length and finally extensively revised, the major objection to the committee's draft being that it established a form of local sovereignty with residuary powers reserved to local public entities It was felt that Japan was too small to permit any form of state sovereignty and that the Diet and the courts could be trusted to protect local communities

In all of these discussions, those working on the problem had to bear in mind constantly that they were dealing not only with the abstract problem of writing a democratic constitution but that they were proposing the most far-reaching political reforms for an entire nation and that, to the greatest extent feasible, the provisions and institutions should be designed to fit the Japanese political picture The document was to serve as a model or pattern, was to be presented as a statement of general principles but in such form that their application could be readily understood Unless, however, the statement bore some relationship to the existing state of things, it was obvious that it would not serve its purpose

Working steadily, the Public Administration Division completed its work on February 10, and the prepared draft was submitted to the Supreme Commander for his approval, accompanied by an explanation of the principles underlying the operation Approved with only one significant change by General MacArthur, the draft was mimeographed on February 12 and the following morning General Whitney, accompanied by Col Charles Kades, Lt Col Milo Rowell, and Comdr A. Rodman Hussey, Jr , met with Foreign Minister Yoshida, Dr Matsumoto, Mr Hasegawa of the Foreign Office and Dr Yoshida's secretary General Whitney informed the Japanese representatives that the proposals of the Matsumoto committee were totally unacceptable, that they fell short of that broad and liberal reorganization of the Japanese governmental structure along democratic lines which the Allied Powers could regard as significant evidence that Japan had learned the lessons of war and defeat and was prepared to act as a responsible member of a peaceful community He then stated that the Supreme Commander had caused to be prepared a detailed statement of those principles he deemed basic, that the statement was being presented to the Japanese Government in the form of a draft constitution, and that the Government was advised to give it the fullest consideration and use it as a guide in its renewed efforts to prepare a revised constitution The Japanese were told that there was no compulsion upon them to take further action but that the Supreme Commander was determined that the constitutional issue should be brought [illegible]

will on constitutional reform Failing action by the Cabinet, General MacArthur was prepared to lay the issue before the people himself

The only discussion that ensued involved the question of a unicameral legislature, which Dr Matsumoto questioned The Japanese appeared visibly surprised and disturbed and said they would have to consider the matter and discuss it with the Cabinet before any definite answer could be given [9]

[9]For an interesting and frank commentary on this conference, see the letter from Jiro Shirasu to General Whitney, dated February 15, 1946, in Appendix C 8

VI. Preparation of the Cabinet Draft

The action of the Supreme Commander in rejecting the Matsumoto draft and presenting to the Cabinet a large-scale chart for their guidance was received with a distinct sense of shock. The Shidehara Cabinet had unquestionably hoped that the Matsumoto proposals might be made the basis of discussion and compromise out of which some vestiges of the old system might be salvaged. The most cursory glance at the SCAP paper on constitutional revision killed any such hopes, as was apparent from the reactions of those present at the conference on February 13. Nevertheless, the efforts continued. On February 18th, Dr. Matsumoto submitted a "Supplementary Explanation concerning the Constitutional Revision." This paper attempted to liken the situation in Japan to that in Germany under the Weimar Republic. It was argued that only native institutions slowly developed over the years and tested by time and experience would survive. It suggested that "a juridical system is very much like certain kinds of plants, which transplanted from their native soil, degenerate or even die. Some of the roses of the West, when cultivated in Japan, lose their fragrance." The paper then argued that no reform or democratization of the government could succeed unless the people understood and accepted their responsibilities and that, therefore, no such democratization or reorganization was practicable or advisable, since the people had not changed. Dr. Matsumoto claimed that his committee had made no real alteration in the terms of the Meiji Constitution quite deliberately, believing that ". . . if . . . fundamental or (too) radical a constitution revision has to be effected suddenly at this time, it would only shock the moderates too severely, and cause them to assume an antagonistic attitude toward democracy itself."*

A crisis immediately developed in the Cabinet which was evenly split between those who supported the Matsumoto plan for token revision and those who saw the need for thorough-going liberalization. The conflict was over the single fundamental issue of whether or not the Meiji Constitution and national polity should be left unimpaired. Foreign Minister Yoshida spearheaded the standpatters supporting Matsumoto. The Prime Minister, Shidehara, tended to support the liberal group but sought to achieve a compromise. Several efforts were made informally to learn just how far SCAP considered all of its proposals to be basic. Finally, the Prime Minister called on General MacArthur to seek his advice. The Supreme Commander declined to intervene. On the 22d, as a last recourse, the Prime Minister, accompanied by Yoshida and Narahashi, consulted the Emperor. Hirohito did not hesitate. He advised Shidehara that he fully supported the most thorough-going revision, even to the point of depriving the Emperor himself of all political authority.

The audience with the Emperor took place in the morning. In the afternoon, Dr. Matsumoto and Mr. Yoshida called on General Whitney. Dr. Matsumoto opened the conference, at which were present the four members of the Government Section steering committee, by saying: "We have accepted the ideas set forth in the draft of the new Constitution, but we are not sure that it presents a workable form." He and Yoshida then made one last effort to use the Meiji Constitution as a working basis for revision. This failing, they sought to argue that there was no legal way of securing a democratic revision. Dr. Masumoto then suggested that a functional upper house be created. He and Yoshida sought to preserve the autonomy of the imperial house-

*An overtender regard for the so-called "moderates" and a veiled warning against a shift to the extreme left are characteristic of the argument used time and again during the past three years by the ultraconservatives against establishment of any form of popular representative government.

hold It was quite apparent that this conference represented the last attempt to secure support for the Matsumoto proposals

On the 25th, Narahashi, Chief Secretary, and Ishiguro, Chief of the Bureau of Legislation, both of them proponents of basic revision, were made Ministers of State without Portfolio, thereby weakening the grip of the tory element in the Cabinet Several informal conferences were held thereafter with Government Section and finally, on March 4, a new draft was presented to General Headquarters for unofficial review This new draft represented a major improvement over the weak and ineffectual attempt of the Matsumoto committee The new draft was presented in Japanese In a session lasting without break from 10 o'clock that morning until 5 30 the next afternoon, members of Government Section and a select group of Japanese officials translated the draft into English, settled on acceptable English phraseology and retranslated it into Japanese that would fairly and satisfactorily convey the intent of the English translation The final draft was approved by the Cabinet on the morning of the 6th and immediately thereafter the Chief Secretary, in the presence of Commander Hussey, certified the English version as the exact and official translation of the original Japanese [10]

That afternoon, following the publication of an Imperial Rescript announcing the adoption of the draft, General MacArthur issued a press release giving the draft his unqualified approval in these words [11]

"It is with a sense of deep satisfaction that I am today able to announce a decision of the Emperor and Government of Japan to submit to the Japanese people a new and enlightened constitution which has my full approval

* * * * * * *

"The Japanese people thus turn their back firmly upon the mysticism and unreality of the past and face instead a future of realism with a new faith and a new hope "

Once the Cabinet had grasped the idea that nothing short of thoroughgoing revision would be acceptable, little conflict over basic issues developed There were few officials among the Japanese who, however much they disliked the idea, did not understand what was required to establish a representative and responsible government Such disagreements as did arise were due in most cases to the complete difference in training and approach between oriental and occidental True to the traditional legislative practice in Japan, it was considered sufficient to state a principle in general terms, leaving detailed implementation to be worked out by statute, ordinance, and regulation Time and again the effort was made to avoid an express limitation or prohibition, to hedge a specific guarantee Great difficulty was encountered over the choice of appropriate language The legal language used in the Meiji Constitution was archaic, stilted, and inelastic, and could not be read, much less understood by the ordinary man It was considered undignified if not impossible to use the vernacular in a constitution * The Emperor could not be referred to in language which implied a prohibition or restraint upon His Imperial Majesty since that would impair his dignity He could be charged with a responsibility, but no more The phrase "advice and consent" came out "advice and assistance" in Japanese in referring to the relationship between the Emperor and the Cabinet

The principal issues with which the opposing factions in the Japanese Government had to contend were few in number The primary one was, of course, the position and authority of the Emperor The liberal element, following the general consensus outside of official circles, sought to repose sovereignty squarely in the people, to be exercised through the machinery

---

[10] Appendix C 9, Constitution of Japan (Cabinet draft)

[11] Appendix C 10, General MacArthur s statement concerning the proposed new constitution for Japan, March 6, 1946

*Early in the discussions an attempt was made to work entirely in colloquial Japanese, but the Japanese vigorously protested the impossibility of such a procedure Their protests lost their force when a draft in simple readable Japanese of the original Government Section proposals was discovered among some papers left after an early conference

of government established by the Constitution. The conservatives, on the other hand, made every effort to preserve the national polity, with sovereignty reposing in the nation as symbolized by the Emperor, to be exercised by the Emperor for his subjects through His Majesty's Government. This would have left the Emperor the residue of authority and the power of participating in governmental affairs.

A bill of rights which gave absolute guarantees to the people proved another stumbling block. Many officials were fearful lest the people abuse their liberties and apprehensive of a break-down of governmental administration unless some legal method of checking or controlling excesses was provided. There was no objection to providing the most detailed and specific protection for persons accused of crimes, for the defendant in a criminal trial. But there was strong support for vesting in the Diet the authority to restrict or impair the exercise of basic liberties in case of "urgent necessity." Throughout the discussions within the Government and with SCAP, there was a well-defined tendency to support the theory of state supremacy rather than individual freedom. Many an effort was made to write into the chapter on the rights and duties of the people the strongest kind of charge upon the people to support the state and promote the public welfare, using language which could at some future time be used as a basis for new thought control or other suppressive measures.

The nature and composition of the Diet proved productive of vigorous debate. The idea of a unicameral legislature was toyed with but never received widespread support. A functional or corporate upper house was greatly favored and, indeed, would have been provided for had not SCAP overruled the idea. There were many who desired an appointive or semiappointive upper chamber, in order that the "best brains"—"men of character and integrity"—could be secured. There was no dispute over making the lower chamber fully representative and more powerful, although some suggestion was made that the lower house should be required to enact a bill three times to overcome the veto of the upper chamber. Then again, the conservatives favored omitting language which specifically vested the legislative authority in the Diet, preferring to leave in the executive a measure of authority to legislate by Cabinet order or ordinance.

Finance proved another stumbling block. The theory of complete budgetary control by the Diet was acceptable to all, but the conservative element saw very practical reasons why the hands of the executive should not be tied altogether. It was felt very necessary to provide for a reserve fund which the Cabinet could draw on, not only in emergencies but to provide for unforeseen situations and "necessary" expenditures not considered at the time the budget had been passed. Subsequent approval by the Diet of such withdrawals could be provided for, but the executive should be left free to act on its own within reasonable limits. Furthermore, this same group argued for some form of tentative or carry-over budget which the executive could follow in the event that the Diet reached a deadlock over the regular budget or rejected the Cabinet's recommendations. The thought that such action would provoke a cabinet crisis resulting in its resignation or dissolution of the Diet was not given much weight.

As a matter of fact, one of the major points of argument proved to be the problem of what powers the executive should have to act while the Diet was in recess. An executive that was fully answerable to the legislature appeared beyond the comprehension of many officials. Time and again the problem of national emergencies was raised. It did not appear enough that the Diet had ample power to authorize the Cabinet to do thus and so under any particular set of circumstances, it was felt that the Cabinet's authority should be drawn directly from the Constitution.

All of these problems were eventually resolved, but not without heated debate in the Cabinet and frequent consultation with this Headquarters It was, of course, quite true that, as *Nihon Keizai* reported on March 1, "the Shidehara Cabinet . is actually the champion of conservatism, and (they) are carrying on the revision of the constitution in such a manner as to maintain the national policy (polity)." Nevertheless, honest efforts were being made and much of the difficulty arose out of a general inability to cope with an issue rather that an intransigent attitude toward democratic revision.

VII. Revision Becomes a Fact

Public reaction to the Cabinet draft was almost universally favorable Great surprise was shown at the very democratic and progressive nature of the draft, particularly as it had been produced by a cabinet acknowledged to be heavily weighted with conservatism That SCAP must have had a hand was generally conceded but, although this probability was openly discussed, there was a complete absence of reaction against the draft on that account *Asahi* commented "In all probability the Shidehara Cabinet alone was not capable of drafting it single-handed It must have been made possible by a strong advice of SCAP, especially the American side." But many papers felt that the pressure of public opinion also had played a part This is unquestionably true The Cabinet was well aware that they were being watched closely and held answerable not merely by SCAP but by the Japanese people as well

There was some fear that the draft represented an accomplished fact and was not open to debate or change Said the *Nippon Times*

"Of course, insofar as general approval represents genuine support of the laudable principles which underlie the draft constitution, it is to be welcomed But insofar as this ready approval represents an uncritical and un- [illegible] may seem at first glance, the true aims of the draft constitution may well be better advanced by a healthy and vigorous questioning of this document than by a too docile and unanimous approval "

SCAP early made it quite plain that there was to be no ban on free discussion, and emphasized to the Cabinet the importance of informing the people that at the forthcoming general election they would be choosing those representatives who would work on revision of the Constitution, who would have the responsibility for enacting the draft into law On March 14, the Government announced that it would submit the draft to the new Diet at a special session to be called immediately after the elections The press welcomed this announcement but was inclined to be critical of the chances of full and free debate and there were many suggestions of a constitutional convention There was universal demand for the fullest freedom of debate and action by a fully representative body

The Communists were almost alone in voicing strong opposition to the draft They objected to the presentation of such a draft by the Shidehara Cabinet, alleging that it was nothing more than an attempt to preserve the Tenno system within a gloss of democracy They also protested attempting to revise the Constitution before the country had become democratized, arguing that the people were in no position to make their own decisions as yet and, therefore, could not freely judge and fairly enact so important a measure

Suggestions for additions to or revisions of the draft were numerous. In general, they revolved around the following points:

1. Simplification of language.

2. A clear statement that "sovereignty is vested in the people."

3. Further limitations on the functions and

prerogatives of the Emperor, with some suggestions for complete abolition of the system.

4. Precise definition of the character and composition of the House of Councillors.

5. Immediate abolition of the peerage.

6. Continuous session of the Diet.

7. More explicit guarantees of workers' rights.

8. Guarantees of social security.

9. Restrictions on private ownership.

10. Prohibition of antisocial monopolies.

11. Provision for gradual nationalization of industry.

12. Guarantees of equitable taxation.

13. Definition of a Japanese citizen.

14. Election of judges.

15. Provision for a jury system.

Throughout the spring, discussion of the draft continued, both within and outside the Government. Government officials were in constant touch with Government Section, polishing the draft, proposing slight alterations here and there and, at times, seeking to modify the draft in the direction of weakening the authority of the Diet and increasing the independence of the executive and improving the position of the Emperor. Unfortunately, the group charged with responsibility for putting the draft in shape for submission to the Diet, the Board of Legislation, had among its members some of the most reactionary bureaucrats still in the Government service.

On the 15th of April, the Chief Secretary of the Cabinet submitted to SCAP a revised version of the cabinet draft, with a certified English copy. The Chief Secretary stated that the draft would be submitted in this form to the Privy Council for deliberation and, following that, would be presented to the Diet on or after the middle of May. Actually it was not until June that the draft reached the Diet. Upon its submission to the Diet, the Supreme Commander issued a statement in which he said:

"With the submission to the Diet of a proposed revision of the constitution, the Japanese people face one of the vital moments in the life of Japan. The fundamental charter of their existence will be determined by the action taken on this monumental question. In its solution, it has been and continues to be imperative (*a*) that adequate time and opportunity be allowed for the full discussion and consideration of the terms of such a charter; (*b*) that the procedure followed assures complete legal continuity with the constitution of 1889 now existing; and (*c*) that the manner of adoption of such a charter demonstrates that it affirmatively expresses the free will of the Japanese people.

* * * * * * *

"In the course of legislative action upon this matter, it is incumbent upon the Diet that it assure to all members the free, fair and untrammelled right of discussion and debate, and that it give thoughtful consideration to every suggestion offered by its membership, regardless of strength or party affiliation. If it approaches its task with that high sense of duty, it will serve the nation well, as on the issue of a democratic constitution rests the well-being of the Japanese people and the future course of destiny for Japan."[12]

The Diet that met to consider the question of revision of the constitution consisted of a House of Representatives, 466 members strong and all newly elected, and a House of Peers to which had been appointed a substantial number of men of learning in the law. The House of Representatives had been returned in the first genuinely free general election in Japanese history on the basis of universal suffrage and with the prospect of constitutional revision in view. Although preponderately conservative, with 102 Liberals and 70 Progressives, it was by no means overwhelmingly so. Three hundred and seventy-five members were entering the Diet for the first time, including the astonishingly large number of 38 women. The people of Japan were unqestionably adequately represented.

The Yoshida Cabinet, which had in May replaced that of Shidehara as a result of the election returns, designated Minister of State without Portfolio Tokujiro Kanamori to shepherd the Constitution through the Diet. Discussions took place in plenary session until mid-July, with Kanamori subject to almost daily interpellation. The revision was then referred to a special committee under the chairmanship of Dr. Hitoshi Ashida to prepare and recommend amendments.

The debates in the House of Representatives

[12]Appendix C: 13, General MacArthur's statement on submission of the draft constitution to the Diet, June 21, 1946.

centered around the imperial institution and *national polity.* While there appeared little disagreement with the provisions relating to the Emperor as a matter of law, there was great concern over whether the age-old doctrine of national polity—whether the fundamental relationship between the Emperor and the people—had been changed Kanamori was at first vague on this question, seeking to leave the impression that there had been no fundamental change It is important to remember, however, that the question related to the nature and intent of the document and not to the specific provisions

On August 24, 1946, the House of Representatives adopted the new Constitution by a vote of 421 to 8, the opposition consisting of two independents and six Communists To the draft proposed by the Cabinet, 2 new articles had been added, 1 had been deleted and 22 had been amended The draft was then sent to the House of Peers, which took a little over a month to consider and approve it, making only a few minor changes Enacted by a vote of 298 to 2 in the House of Peers, the final version was approved in the lower House on October 7 by 342 to 5 The revision then went to the Privy Council which, after considerable debate, approved it on October 29 at a special session attended by the Emperor November 3, the birthday of the Emperor Meiji, was fixed as promulgation date, with the new Constitution becoming effective 6 months thereafter [13]

With the adoption of the new Constitution, the government launched an ambitious plan for publicizing and popularizing it A semi-official organization known as the Society for the Popularization of the New Constitution was formed under the presidency of Dr Ashida This society caused a pamphlet to be printed containing the text of the Constitution and a brief explanation of its significance and distributed copies to every household in Japan at the time of the general elections in April At least two moving-picture films were sponsored, one of which achieved wide popularity A series of lectures for training purposes was held in Tokyo, forums were then set up in the eight regional centers and thereafter courses conducted in every prefecture. In addition, a series of simple posters depicting the important changes in organic law was designed by Governmental Powers Division of Government Section, executed by Civil Information and Education Section, and used by the society as posters, slides, and film strips throughout Japan. The society even issued a copy of its pamphlet in Braille

During all of the time that the Diet was considering the proposed revision, SCAP watched the proceedings without actively interfering. Consultations were carried on almost continuously, and all proposed amendments were checked with Government Section, but only on one occasion did the Supreme Commander instruct the Japanese Government to take any specific step During the course of the summer, the whole subject of constitutional revision had been under discussion in the Far Eastern Commission. A general statement of principles had been made in the form of a policy decision in the late spring, but in no way did this general statement diverge from those forming the basis for the Japanese proposals. However, in late summer, at the insistence of British Commonwealth representatives, the Commission voted to require that the Constitution provide that (1) all Ministers of State be civilians, (2) a majority of the Ministers of State be members of the Diet and (3) the Constitution state clearly that sovereignty rested with the people. The third condition had already been complied with and the Diet was more than [illegible] insert the other two provisions.[14]

[13] Appendix C 21, Text of the Constitution Also No 19 Message of the Supreme Commander on the promulgation of [illegible] tion, November 2, 1946, and No 20 Emperor s rescript of November 3, 1946

[14] For Far Eastern Commission s discussions pertaining to the Constitution, see Appendix C Documents Nos 12, 13, 25, [illegible]

VIII. The Significance of the New Constitution

The surrender of Japan, involving acceptance of the Potsdam Declaration, required the Japanese Government to "remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people" and to establish "freedom of speech, of religion, and of thought, as well as respect for the fundamental human rights." That Declaration provided that the occupying forces of the Allied Powers would be withdrawn when the above objectives had been accomplished and there had been "established in accordance with the freely expressed will of the Japanese people a peacefully inclined and responsible government." These, of course, represent basic tenets of democracy. They are the goals of the Occupation because the Allied Powers believe that the surest guarantee of peace for the world is to repose the authority of state and the powers of government in the hands of those upon whom the burdens and the sufferings must fall. They are the goals of this Occupation because these powers believe, as well, that the ills, the cancers that drive men to crime and nations to war can be cured through the free, responsible cooperation of free people, first in the management of their own affairs and second in the management of world affairs. It is in the guarantee of freedom of opportunity and the right of participation in the determination of his own destiny, it is in the recognition of the individual as the basic significant element in political society, it is in the belief that man, in full possession of the facts and relieved from the pressures that warp or subdue his judgment, will assume his responsibilities and discharge his duties to society with justice and integrity, that we place our faith.

These principles are poles apart from traditional Japanese political philosophy. Clearly there existed no soil for planting such ideas or chance for fruitful growth under the Japanese political system. Even though the acquiescence of the people was a basic element of strength in that system, the Japanese people—completely borne down by the crushing weight of feudal tradition, almost completely denied the free interchange of ideas with the rest of the world and free access to its progress, material and spiritual, allowed only the most pitiful semblance of participation in their own government, forced to live in a state of semipoverty, watched over, ruled over, oppressed and intimidated by the civil and military police, schooled in the doctrine that elder brothers, parents, elder statesmen, men of rank and prestige knew what was best for them—had little opportunity to do aught but acquiesce.

At the same time, there were forces operating beneath the surface, not only the dissident groups that had tired of war and wearied of destruction, not only the liberals of the professional and upper classes, but among the plain people. The urge of the common man toward freedom from oppression, toward self-government, toward a richer, fuller life, toward equality of opportunity and equality of justice, had not been stifled. On the contrary, that urge became almost a triumphant shout. In the immense relief from the terrible burden of the war, the Japanese people looked upon the surrender almost as a liberation. If this were not so, then our own tasks would have been made immeasurably more difficult. It was this strong and vociferous demand for action—this nation-wide and articulate reaction against the ruling classes who had brought destruction and defeat to crown years of unrestrained oppression and servitude—that forced the Japanese Government to undertake a real program of democratization.

The Japanese officials who worked on the new Constitution were, for the most part, experienced bureaucrats or trained professional men. They knew and understood the issues involved and many of them were well acquainted

with Anglo-American law, both municipal and constitutional They had been given the most detailed guides They knew how and why a true parliamentary system had failed to take hold during the 1920's They were fully acquainted with the operations of their own system of government and understood well just wherein the existing legal curbs failed to curb They were under heavy pressure at all times from a far more enlightened public than we or they had any reason to expect As revolutionary as the changes were, as complete a reorganization as took place, it is not to be looked upon either as a miracle or military fiat The Japanese Government was told in direct and forthright language that revision of the Constitution was a must if they were to have any hope of meeting the requirements of the Potsdam Declaration When they failed to make even an honest attempt to liberalize the Meiji Constitution, they were given a primer containing the ABC's of modern representative popular government and told to use it as a guide They were well aware that the lessons contained in that primer had already been learned by the Japanese public—they had only to read their own daily papers to discover what the Japanese people wanted Any fears the Government had that complete liberalization would shock the people were dissipated when the revision reached the Diet

The new Constitution[15], enacted in the form of an amendment to the Meiji Constitution, transforms Japan into a representative parliamentary democracy, characterized by the supremacy of the legislature over the executive. Its purpose is stated in the preamble as follows

" that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government, "

Government is stated to be

" a sacred trust of the people, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people "

The Constitution gives to Japan a single, all-embracing organic law, of the land, a thing which it never had before All public officials are bound to support and defend the Constitution There can be neither extraconstitutional political institutions nor officers and no officer of the state can be above the law This is, in itself, a major change For the first time in Japanese history, the people can see for themselves not only what their rights and powers are, but what legal limitations are imposed upon the government itself Significant indeed are the words of the Prime Minister in his speech of July 1, 1947, to the Diet in which he said "As the first democratic government, the people's government, nay, the public servant of the people " The Constitution makes that so

Sovereignty—the ultimate authority of the state—is by the Constitution vested in the people, to be exercised only according to the procedures established by that document and the laws enacted thereunder Amendments are initiated only by the Diet, to be enacted by concurring vote of two-thirds of the members of each house and to be ratified directly by the people Laws can be enacted only by the Diet, can be administered only by the Cabinet and interpreted only by the judiciary The Japanese people now have the absolute right to institute government, to reform, to alter, to change it totally, but unless and until they do, all persons and all officials must observe the law of this Constitution

During the debates in the Diet on the new Constitution, perhaps the most burning question was what happened to national polity—"Kokutai"—under the proposed new organic law National polity is a local concept of sovereignty—the proposition that all law, all authority, all unity reposes in the imperial institution which itself is everlasting and indestructible. It was argued that under the Constitution, in consonance with this doctrine, the Emperor as the symbol of the state and of the

[15] Appendix C 21, Text of the New Constitution as promulgated on November 3, 1946

unity of the people remained as the fountainhead of state power. Such a construction is extremely forced and unrealistic. The plain language of the document itself makes it perfectly clear that the imperial institution is no longer the source of any authority whatsoever, can exercise no powers, and is certainly not indestructible. The Emperor is now no more than the crowning pinnacle of the structure, bearing no functional relation to the frame itself.

Chapter 1 makes the Emperor a legal organ of the Japanese state, under and subject to the Constitution. "The Emperor shall be the symbol of the State and of the unity of the people, deriving his position from the will of the people with whom resides sovereign power." This language is clear, explicit and unmistakable. Sovereign power reposes in the people—the whole people—to be exercised through the legal processes of government established by the Constitution and the laws enacted pursuant thereto. This chapter expressly defines the extent of the Emperor's authority, the limits on his powers. That "he shall not have powers related to government" is stated in article 4. He has no discretion. His acts of appointment, attestation, promulgation, et cetera, are nothing more than the confirmation of the acts of the representatives of the people, a confirmation he cannot withhold, he must give.

Chapter 2 is truly a landmark in constitutional history. Through the renunciation of war and the prohibition of armed forces, the power and influence of a military establishment within Japan have been destroyed and the burden of armament lifted from the Japanese people. Furthermore, the threat of belligerency as an instrument of diplomacy is discarded. Here is a pledge of good faith offered to the world, a self-imposed and legal bar to aggression which must of necessity operate to induce the adoption by Japan of peaceful methods for the settlement of disputes with other countries.

Chapter 3 is entitled the "Rights and Duties of the People." It is a charter of freedom for the individual in Japan. This is essential to a democracy. Herein are defined the fields of individual action into which government may not move. Where the preservation of society makes it necessary, the police power may be exercised but only through established procedures and subject to judicial supervision. Redress is provided against the state for wrongs committed. Basic rights in social, political and economic fields are guaranteed. The people are now free to discuss, to exchange ideas, to criticize and to oppose. They are free to seek gainful work. They are free to worship as they please, and they cannot be compelled to support by public funds any private institution. Workers are free to bargain collectively with their employers. The equality of all persons before the law is assured. Their inalienable right to choose and to dismiss public officials is established. The responsibility of public officials to the people is recognized. The people are assured that one of the objects of government is the betterment of the living and working conditions of the people. Members of the family are brought into a position of equality. *In other words, the civil liberties of the individual are guaranteed in the* broadest of terms as the true basis for democracy.

This chapter brings about another major change in the Japanese state, a change which is definite enough on paper but which will take years to make itself felt in Japanese life. By the insertion of a comprehensive and specific guarantee of the civil liberties of the individual—a guarantee that in many cases goes far beyond the guarantees of our own Constitution—a complete break with the past has been made. The individual is recognized in law as the significant element in political society. In the place of rules and regulations imposed to dignify and implement the power of the state, controls are imposed upon the state itself. Heretofore, every guarantee or privilege pretended to be enjoyed by the subject was limited in fact by the consideration of the welfare of the state. The extent and nature of such consideration were determined by government offi-

cials and there could be no appeal from such a determination. Today, the individual is given specific vested rights which may not be abridged—the exercise of which may not be interfered with—without his consent

Chapter 4 opens with the statement that "The Diet shall be the highest organ of state power, and shall be the sole law-making organ of the State " Under the Meiji Constitution the National Diet played but a minor part in state affairs It represented but a small segment of the population, the lower house was powerless to override the House of Peers or to check the executive and, according to legislative practice, the laws that were enacted were but loose statements of general principles The real legislation was effected by imperial ordinance or ministerial ordinance, prepared and promulgated by Privy Council and Cabinet This is no longer true The whole legislative power is reposed in a national Diet composed of two houses fully representative of all the people The House of Councillors, with half of its members elected every 3 years for fixed 6-year terms, is the senior body, with little legal power but enjoying the means of slowing down measures and thus securing more sober consideration The House of Representatives can override the House of Councillors on all ordinary legislation by means of a two-thirds vote In the case of disagreement on the election of a Prime Minister, on the budget or on treaties, the vote of the lower house prevails after the lapse of a stated period Under the implementing legislation, the right of the Cabinet to issue cabinet orders is strictly limited to express delegations by law The law—the regulations—which are required for the government of society can only be enacted by the people through their chosen representatives.

This is perhaps one of the most basic changes, that in the concept of law itself. Law, in traditional Japanese political philosophy, represented the edict of the ruler Its force—its *raison d'etre*—was the will of that ruler It bore no direct relation to either the wishes or the beliefs of the people The basic theory of law under the new Constitution is that of a body of rules adopted by the chosen agents and representatives of the people according to established procedures for the purpose of fixing standards of conduct and authorizing acts in the name of the public. It is the expression of the will of organized society and it represents, in a democracy, a social decision on a matter of public interest affecting the public welfare

Chapter 5 treats of the Cabinet It is vested with executive power but made fully responsible to the National Diet The Prime Minister is elected by the Diet and both he and a majority of his ministers must be members of the Diet All must be civilians The Prime Minister appoints and dismisses his ministers in the free exercise of his discretion, but if the Cabinet loses the confidence of the Diet it must either resign or dissolve the Diet and call a general election of the House of Representatives. It executes the laws and administers the government under the Constitution, but it is but one of three equal branches of government, with no authority over either the legislature or the courts In all its activities, it is bound by the law It cannot act unless the authority has been delegated to it or charged to it by the Constitution under article 73, or by the Diet in the exercise of its legislative authority This is a far cry from the old system, wherein the Prime Minister and the Ministers of State were appointed by the Emperor, were the creatures of the ruling cliques and administered the entire affairs of state for them and under their direction, controlling courts and legislature as well.

The device of parliamentary responsibility procures the answerability of the executive branch of the government to the people through their duly elected representatives. In the United States this responsibility is enforced through direct election of the President and Vice President. In England and the continental democracies, the pattern is similar to that of Japan. In either case, the result is the same. The exec-

utive branch of government has no legal authority, excuse or justification for acting in defiance of the mandate of the people. Every public officer, every public employee is the agent and servant of the people.

Chapter 6 deals with the third great branch of government, the courts of law. There are two methods of assuring the freedom of the individual within the state. His right of participation in the affairs of government and the absolute responsibility of every agent and official of government to him must be established and maintained. Through the exercise of his right to choose and dismiss his agents and to procure the enactment and amendment of the laws, he protects himself. But, in addition to this, he must be assured of a forum to which he may turn for the settlement of disputes and the redress of grievances. That forum must be free from interference by any other branch of government. Its judges must be independent, that they may administer justice without fear or favor. Under the traditional system, the courts of Japan were subservient to and legally under the executive branch of government. This, in itself, is serious. But, far more grave, the people had no resort to those courts against their own government. No law established legal limitations upon the authority of government and no court could enforce legal liability for wrongs committed. Under the new Constitution, an independent judiciary is assured—independent of all else but the mandate of the people. To that independent judiciary has been granted the whole judicial power, including the specific power of constitutional reviews. As a check both upon the executive and the legislative branches of government, the national judiciary is now given the right to determine whether any law or other enactment or official act conforms to the Constitution. This provision gives to every citizen who has a legal interest the right to challenge the validity of any official act of his government as measured by the terms of the organic law he has helped bring into force. This is essential. It gives life to the bill of rights. In the same way that the device of parliamentary responsibility makes the executive politically answerable to the people, through the courts it becomes legally answerable.

Chapter 7 deals with public finance. The controls exercised by the executive under the Meiji system were many and different, but nearly every one was hidden behind a shield of legitimacy to which the legalistically minded Japanese officials could point in answer to levied criticism. Particularly was this so in the field of public finance. For one thing, an annual budget was prepared by the Cabinet and submitted to the Diet. This was required by law and by law the Cabinet could expend only the moneys provided for by the annual budget. But in considering the budget, the Diet could only approve or disapprove, it could not alter. Most items in the budget were fixed by separate law which required an annual appropriation. As for other items, if the Diet refused to appropriate, the Cabinet was authorized to spend the amount specified in the budget of the year before. Military and naval appropriations, funds for the imperial household and other extraordinary expenditures were outside the scope of the budget altogether. And a reserve or contingent fund upon which the Cabinet could draw without Diet approval was always available.

It is a principle of democratic government that the public controls the purse strings and that no one session of the legislature bind absolutely succeeding sessions. The new Constitution has provided for this, requiring that no money shall be expended nor shall the state obligate itself except as authorized by the Diet, by requiring an annual budget, by requiring that expenditures for unforeseen deficiencies be subsequently approved by the Diet, by requiring a complete audit every fiscal year, by requiring that all expenses of the imperial household be appropriated by the Diet, and by insisting upon annual reports to the Diet and the people on the state of the national finances.

Chapter 8, on local self-government, adds

new and far reaching principles to Japanese organic law. The reason for this is obvious. It is on the local level that the individual citizen gains his experience in participating in public affairs It is on the local level that he most directly comes in contact with his government Heretofore, local government in Japan was controlled by the national executive whose authority was neither limited nor defined by law. Under the new Constitution, local public entities are guaranteed the right to elect their chief public officials, the members of their assemblies and other public officials The controls necessary for coordination and standardization are hereafter to be applied by law, and within that law, local public entities are guaranteed the right to manage their property, affairs and administration and to enact their own regulations

Of the remaining two chapters, chapter 9 provides the method of amending the Constitution, while chapter 10 establishes its supremacy Article 98 provides that "this Constitution shall be the supreme law of the nation and no law, ordinance, imperial rescript or other act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity " Article 99 provides that "the Emperor or the Regent as well as Ministers of State, members of the Diet, judges, and all other public officials have the obligation to respect and uphold this Constitution " This sets the final stamp of completeness on the organic law No officer or agent of the government, no agency or office of state can exist outside of the terms of or not subject to the provisions of the Constitution

The new Constitution is as yet no more than a new set of rules, devised in committee and communicated to the players, in which the players have as yet little familiarity or confidence It will take time and experience before they know the rules well enough to play by them The game is not entirely new and different, however The cultural influences of the West have been seeping into Japan for over 300 years The social revolution that took place in Europe was felt in Asia. During the past 75 years, the economic modernization of Japan—the growth of a large industrial laboring class, the establishment of an easily handled and converted medium of exchange, the freedom that came with the establishment of business enterprises large and small throughout the country, the increased contacts and experience with all the impedimentae of western social life—had its effect in creating an interest in and urge for individual as well as political expansion The people acquired a measure of economic freedom before they secured any political freedom, but that soon followed Social freedom came as a natural outgrowth Needless to say, nothing approaching that enjoyed by Western peoples was secured, but the beginnings were enjoyed and appreciated, and formed fertile soil for the growth of a native popular movement

In Japan, the people exhibited a native trait of conservatism The popular movement, strong as it was, took the form of increased pressure on the government for reform, for release from oppression Any means by which this pressure could be amplified, any means by which the demands of the people could be more clearly voiced, were seized upon Thus it was that the reform of the fundamental law, under the occupation, whereby the Government of Japan became more directly answerable to and responsible for the people, was accepted with considerable public acclaim and no trace of opposition The great mass of the people do not, as yet, have a deep understanding of the power now resting in their hands, but they do appreciate that great changes have taken place and they do welcome those changes and intend to make the best of them

The danger does not lie in leaving the reins of government in the hands of the Japanese people The great danger today lies in permitting to return to positions of influence and authority the representatives of the old regime, the political and economic reactionaries who kept the people in a state of misery and slavery

and who deliberately planned and encouraged war as a means of self-aggrandizement. Once the people of Japan know how to use the new machine, they themselves will not permit its misuse. With enlightened support and encouragement from the West, they can secure their gains and become a responsible and peaceable contributing member of international political society.

SECTION IV

The National Executive

Introduction

Under the form of government that existed prior to the Occupation, the term "executive" would be extremely misleading, since a national bureaucracy controlled all phases of the execution and administration of laws and government. The organization of the government before the Occupation will be considered first, if briefly, then an examination will be made of the governmental structure as it existed in August 1945, and in the subsequent sections, the various changes that took place before and after the revision of the constitution

It cannot be too strongly emphasized that we are dealing with an extremely complex and ill-defined organization when we discuss the organization and operations of the government of Japan For one thing, the so-called Meiji Constitution was not an all-embracing organic law but merely one document of a collection of laws, rescripts and customs which, together, made up the unwritten constitution of the Japanese State For another, the formal structure of the government, as defined by law, presented the slimmest kind of skeleton and gave no hint of the manner of operation or even the elasticity of detailed organization. There was never any clear separation of powers or division of responsibilities The Government, within the general framework, was constantly being revised and reorganized either to meet the pressures of a particular situation or to suit the requirements of a particular clique or cabal

The Japanese governmental structure was not one that developed gradually through the growth of native institutions but one that was imposed, in toto, within a period of 20 years (1868-90) The institutions were for the most part copied after the continental pattern, although British and American political patterns were to some extent drawn upon by the Meiji statesmen and their successors The structure was pyramidal in form, all authority being concentrated in the imperial institution and all powers being exercised or controlled through a central executive answerable only to the throne. The National Diet was primarily a device for giving an appearance of parliamentary government and for providing a convenient forum for relieving popular pressure through permitted debate on selected critical issues. The courts were solely creatures of the Ministry of Justice. There was no autonomy in the local governments.

I. Presurrender Organization

Before considering the actual organizational details of the executive, it will be well to point out just how this executive operated. The focal point was, of course, the Emperor. Policy was a matter of compromise between the various groups and factions which had access to the Emperor and which controlled the exercise of the imperial will. These factions may be divided for convenience into four general groups, but the lines of demarcation between them were vague and subject to constant change. The four groups were: the military, heirs and representatives of the samurai—the knights of old Japan; the aristocracy, including the members of the imperial family; the Zaibatsu, monopolistic financial and industrial interests founded by the wealthy merchants who had financed the Meiji Restoration; and the bureaucracy, the professional, privileged civil servants who conducted the administration of government. Each controlled its own bailiwick, yet each supported the others and differed only in matters of degree and method. The military operated through the Grand Imperial Headquarters, and the aristocracy through that typical Japanese device, the family council, or through the Genro, the council of elder statesmen. The Zaibatsu infiltrated all top advisory agencies of government, particularly the Privy Council and the House of Peers, and the same was true of the bureaucracy.

The following are the semiofficial and extraconstitutional agencies through which all formal policy decisions were made. Only one, the Privy Council, was mentioned in the Meiji Constitution; not one was strictly defined by law.

1. Imperial Conferences (Gozen Kaigai)

The imperial conference was solely the prerogative of the throne. Neither the Constitution nor the law authorized its existence. Attendance at these conferences varied, both in number and in representation. The largest ones were attended by high-ranking generals and admirals, the Prime Minister, the Genro, the Lord Keeper of the Privy Seal and various Ministers of State. Finality on major problems, both executive and legislative, was reached in the presence of the Emperor. His sanction sufficed to give full authority to whatever action was decided upon.

2. Genro

The Genro may be described as advisors to the executive sovereignty of the Emperor. The original group, established during the Meiji era, consisted of six members. They advised both the Emperor and the Cabinet. Advice was at the request of the Emperor. With only one exception, this group selected all Prime Ministers after 1892. As a result this extraconstitutional body was assured almost certain control of the Cabinet. The Genro consisted entirely of Japanese aristocrats, princes, marquises, viscounts, and other titled and landed representatives of old families.

3. Senior Statesmen (Jushin)

The body of senior statesmen was created considerably later than the Genro. In some respects it gradually assumed certain functions of the latter group. Senior statesmen had no fixed tour in office. Usually they included the Lord Keeper of the Privy Seal, the President of the Privy Council, and former Prime Ministers. The senior statesmen met informally, merely by virtue of their high office.

4. The Emperor's Military Board

No body of the Japanese Government controlled the war powers of the Army or Navy.

Such powers were vested exclusively in the Emperor to whom the military enjoyed direct access Two formal bodies, the Supreme War Council and the Board of Field Marshals and Fleet Admirals, formulated military policy in the name of the Emperor.

5. The Board of Field Marshals and Fleet Admirals

The Board of Marshals and Fleet Admirals was, in theory, the highest advisory body to the Throne on Army and Navy affairs In actual practice, however, the basic policy was formulated by the Supreme War Council

6 Supreme War Council

The Supreme War Council was established by Imperial Ordinance No 294 in 1903 The council advised the Emperor on all military and naval policy and coordinated all administrative and tactical organizations Its deliberations encompassed more than military and naval affairs and, as a result, it assumed an importance in government considerably above what might be expected of an agency so constituted Its membership was composed exclusively of Army and Navy officers and officials of the War and Navy Ministry.

7. Privy Council

The imperial ordinance creating the Privy Council explained that "we deem it expedient to consult personages who have rendered significant services to the State, and to avail ourselves of their valuable advice on matters of State." The Council furnished another example of body exercising both executive and legislative functions It was organized to be a permanent governmental institution of conservative statesmen

The Privy Council consisted of a president, a vice president, and 25 councillors, all of whom were appointed for life by the Emperor. Six specific powers were assigned to the council by imperial ordinance:

a Matters which were under its jurisdiction according to the provisions of the imperial house law

b Drafts of laws and doubtful points relating to the provisions of the Constitution and laws and ordinances supplementary thereto.

c Proclamation of national law under article 14 and the imperial ordinances to be issued under articles 8 and 70 of the Constitution, as well as all other imperial ordinances having penal provisions

d International treaties and agreements.

e Matters relating to the amendment of the organization of the Privy Council and to the rules for the conduct of its business.

f Matters especially submitted to its deliberation for its advice in addition to those above-mentioned

Article 56 of the Meiji Constitution specifically provided for the council "The Privy Councillors shall, in accordance with the provisions for the organization of the Privy Council, deliberate upon important matters of state when they have been consulted by the Emperor " The president of the council controlled its meetings and introduced matters for discussion, voted and announced decisions, appointed committees, and signed all documents for the council. The work of the council was performed by committees, decisions were reached by majority vote, records were kept, and opinions on various issues were sent to the Emperor and to the Prime Minister Reports covering the activities of the council also were released to the press in many instances

It will be seen that the Privy Council was probably the most important and powerful single agency of the Japanese Government No laws could be enacted, no appointments made, no rescripts issued without its approval and while access to the Emperor could be obtained without going through the Privy Council, no formal action could be undertaken without its concurrence

8. The Lord Keeper of the Privy Seal

The Lord Keeper of the Privy Seal acted as the personal adviser to the Emperor on virtually all matters of importance to the state. Appointed directly by the Emperor, he customarily made recommendations to the throne on the appointment of the Prime Minister and controlled all access to the Emperor except for top-ranking military and naval officers and a very few others. Since all bills and petitions passed through his office for imperial sanction, his power over the executive was unquestioned.

9. The Prime Minister

The actual administration of civil government was carried on by the ministries, boards and bureaus of the Cabinet, acting under the Prime Minister. The Prime Minister was the chief link between the inner circle surrounding the Emperor and the legal government. He was ex officio a member of the Privy Council. He was not the senior member but the actual executive head of the Cabinet. While not legally responsible to the Diet, he exercised considerable actual authority over the House of Representatives and maintained the chief liaison between the Diet and the Cabinet. He was, of course, the top public figure in the government and, as such, bore the responsibility for whatever happened. With little real authority, save through the wielding of his influence and the use of his connections, charged with the onerous task of carrying out the policies determined by the powers behind the throne, constantly forced to keep peace between the many contending factions, exercising little control over the police or the bureaucracy, and none at all over the military, his seat was never an easy one nor his tenure long.

10. National Agencies Not Under the Cabinet

Before considering in detail the organization of the Cabinet itself, mention should be made of three agencies of the Government which, while not properly a part of the executive, played important roles in the administration of Government. The board of audit, under article 72 of the Meiji Constitution, was responsible for *verifying and confirming* the accounts of the Government and reporting thereon to the Diet. The board had considerable prestige and influence. The court of administrative litigation existed as a special body to hear and determine complaints against administrative acts and regulations. It was the only court in which actions were heard against an official or agency of the state, and there was no appeal from its decisions. Its jurisdiction was purely statutory and extremely limited in extent. The ministry of the imperial household was not a ministry of the Cabinet at all, but the state agency which administered the needs, managed the property and arranged the protocol and ceremonial functions of the imperial institution and the imperial family. It was entirely extra-constitutional, functioning under the Imperial Household Law, and one of the most powerful bodies in Japanese political and economic society.

11. The Cabinet

All formal operations of the Government were performed under the supervision and control of the Cabinet, the top administrative agency of the State. The courts, directly under it, were little more than instruments of state power. The Diet—that is, the House of Representatives—was secondary to it. Only the military agencies were independent of and not under its influence. The following is a contemporary account by a Government Section observer based on an "on-the-spot" study:[1]

"In Japan the term 'Cabinet' has two distinct meanings. The first is a collective term to designate all Ministers of State and the Prime Minister. In this sense, the terms 'Cabinet' and 'Cabinet Council' are interchangeable. The second meaning designates the executive agencies of the Prime Minister, comprising

[1]Appendix D: 1, Study of The Cabinet.

special executive offices directly responsible to the Prime Minister and entirely apart from the ministries and the Cabinet Council.

jurisdictional disputes among the various Ministries, public petitions forwarded by the Diet or from the Emperor; disbursements not provided for in the budget, and the appointment, award of honors to and treatment of first-class officials The Cabinet as an executive agency of the Prime Minister likewise has important Government functions However, these functions are, generally speaking, more administrative than policy-making

"The Cabinet and its subordinate bureaus, boards, sections, and committees have powers or functions which are either not delegated to other government agencies or are general in nature, such as personnel affairs covering all higher officials

"The Cabinet as a whole can be regarded as the principal executive organ under the Japanese system of government. However, it would be somewhat inaccurate to think of it as 'executive' in the occidental sense of the term. According to Japanese political theory, the Emperor combines in himself all powers of government and [illegible]

capacities can be regarded as a general administrative 'housekeeping' unit of the government as a whole and in another sense it can be regarded as one of the supreme consultative organs for the Emperor As a 'housekeeping' unit it is simply a government body which can be considered in the same light as a ministry, as a consultative body it is the Cabinet Council "

12. The Cabinet Secretariat

The Cabinet Secretariat, responsible to both the Cabinet Council and the Prime Minister, was the key organ for the administration of Cabinet business It was, however, under the direct supervision of the Chief Cabinet Secretary and the Assistant Chief Cabinet Secretary, both of whom were directly responsible to the Prime Minister.

The Chief Secretary was responsible for the proper functioning of the Cabinet Secretariat and served in a capacity equivalent to that of a parliamentary vice minister with functions similar to those of a vice minister His responsibility was upward toward the Prime Minister and not downward toward the organizations under his supervision In other words, his principal function was that of offering advice to the Prime Minister, not of administering the Sections under him

The Cabinet Secretariat was not a separate Cabinet organ but was comprised of component sections, namely, general affairs, personnel, accounts, and the Cabinet Councillors' Chamber. The head of each section was directly responsible to the Chief Cabinet Secretary Most of its functions pertained only to the Cabinet although some covered Government-wide fields of activity

II. The Machinery of Government

Since Occupation policies are implemented by the existing Japanese governmental machinery, the Japanese Government as of September 1945 is a logical starting point for a study of the national governmental structure. The structure differs from that of the old peacetime organization to some extent, but in no actually important feature.

In the execution of Government Section's mission, a number of structural changes were made in the Japanese Government Some of these were the direct result of SCAP action In by far the greater number of cases, however, changes were initiated by the Japanese and accomplished with the advice and guidance of SCAP Almost overnight, the Cabinet became the actual executive head of the Government, the extraconstitutional advisory bodies disappeared or became ineffective, and the administration of Government resumed a guise of legal-

ity and regularity that was indeed reminiscent of the 1920's. Skilled in their trade, the bureaucrats assumed the power and undertook to prepare the scene for the new act. It is indeed significant that every shift was made without benefit of statute and without the necessity of touching the Meiji Constitution.

1. The Military Headquarters

This consisted of the Grand Imperial Headquarters and the Supreme War Council. The Grand Imperial Headquarters was composed of the imperial aides-de-camp, the Board of Field Marshals and Fleet Admirals, the Army and Navy General Staffs, and the Ministers of War and Navy—in other words, the military advisers of the Emperor. The Supreme War Council included the top military and naval figures and other influential officials and functionaries of the Government. Both were dissolved with the surrender, the military components by direct order of the Supreme Commander. All that remained was the skeleton organization required to complete demobilization and demilitarization of the Japanese armed forces.

2. The Imperial Conferences

These were never formal organizations and with the top policy decisions taken out of the hands of the Emperor and the Japanese Government, the necessity for calling them disappeared. Neither Genro nor Jushin convened after September 2, 1945, and the adoption of the new Constitution completed their extinction.

3. The Imperial Household Ministry

This went out of existence with the passage of the Imperial Household Law in April 1947, in conformity with the new Constitution.

4. The Board of Audit

This agency continued to perform its normal functions but was given new importance and greatly enlarged powers under the revised board of audit law enacted in March 1947. The new law accorded the board a status "independent of the Cabinet." Its members are appointed by the Prime Minister with the consent of the Diet but, when the two Houses disagree, the decision of the House of Representatives as expressed by a simple majority will prevail. Its powers include that of demanding disciplinary punishment of negligent public officials and the power to levy indemnities against officials responsible for losses to the state. These provisions, together with the provisions in the new finance law protecting the board against arbitrary budgetary restrictions by the Cabinet, assure to it the independence required for effective functioning as the top auditing authority over the financial affairs of the Government.

5. The Court of Administrative Litigation

This agency performed no useful function subsequent to the surrender and went out of existence on May 3, 1947, when the new Constitution became effective.

6. The Privy Council

The Privy Council functioned normally until its abolition immediately prior to the effectuation of the new Constitution. A number of new appointments were made to it during the early months of 1946 and it performed certain useful supervisory or coordinating functions, though it fell completely under the influence of the Prime Minister subsequent to the Surrender.

7. Lord Keeper of the Privy Seal

The office was abolished by the Japanese on their own initiative in November 1945, and custody of the Imperial Seal and control of

official access to the Emperor transferred to the office of the Prime Minister.

8. The Prime Minister

Although no legal change occurred, the office increased immensely in influence and prestige between September 2, 1945, and May 3, 1947, when the Prime Minister became the chief executive official of the Government With the new political freedom and the growth of political parties, almost immediately the Prime Minister became the leader of the dominant political party As the de facto head of the government, he was the official through whom the Supreme Commander transmitted his orders. The natural, if unplanned, assumption of by far the great majority of Occupation officials that the Cabinet was the chief responsible administrative organ of government (an assumption not reflected in the basic policy directives) helped to bolster the Prime Minister's position With the convening of the first truly popularly elected Diet in May 1946, it was inevitable that a cabinet crisis would ensue that could be resolved only through the parliamentary device of selecting the leader of the strongest party in the House of Representatives Force of circumstances then elevated the office and transformed it into something closely approaching a responsible parliamentary premiership

9. The Boards and Bureaus of the Cabinet

These fall into two general categories, those which handle purely administrative matters within the government and those which deal with special governmental responsibilities Those which fall into the first group are few in number and of no major significance save for one only

a *The Secretariat* The Cabinet Secretariat, headed by the Chief Secretary, manages the business affairs of the Cabinet While its formal functions are purely administrative, the Chief Secretary has become a party leader second only in influence to the Prime Minister, and a powerful figure in his own right in cabinet circles.

b. *Bureau of Pensions and Bureau of Statistics* The functions of both of these small bureaus are routine and administrative and they play no significant part in affairs of state.

c *Bureau of Legislation* This bureau prepared the original drafts of all bills and other documents coming before the Cabinet or the Diet After the surrender, it took over the work of drafting imperial ordinances and rescripts and in fact every legal document issued by the government Its influence, never slight, became great indeed Early in the Occupation the officials who staffed this bureau assumed the prerogative of supervising all Diet legislation and, indeed, of superseding the Diet through the device of Cabinet Orders The conflict broke out into the open in the summer of 1947, at which time the Diet asserted its independence and, at the same time, SCAP issued Staff Memorandum No 81 restricting the scope and purpose of Cabinet Orders within constitutional bounds[2] Early in 1948, by act of the Diet, the Bureau of Legislation was abolished and its functions, carefully delimited, transferred to the newly established Attorney General's Office

d *Temporary Committee for the Investigation of the Legal System* This body was set up under Imperial Ordinance No 348 of 1946 in August 1946, to undertake such revision of the various codes of law as revision of the Constitution might require The committee served until eliminated at the time of the reorganization of the Cabinet in May 1947.

e. *The Administrative Research Bureau* Established in October 1946, under Imperial Ordinance No. 490 of 1946, this Bureau was charged with the work of drafting plans for the reformation of administrative organization within the national government Working in close consultation with the Government Section, it performed yeoman service in planning the re-

[2]Appendix G 8a (7), "Curtailment of Scope of Japanese Cabinet Orders," Staff Memorandum No. 81, October 1, 1947.

organization of the internal structure of the national government and drafting the necessary bills to effectuate many of the changes that took place.

The remaining boards and bureaus performed executive functions of government. It has long been customary within the Japanese Government to establish a special board or agency to handle some problem which did not fall specifically within the jurisdiction of one of the regular ministries. These agencies operated directly under the Prime Minister and were frequently headed by a Minister of State without Portfolio. Some of them were—and are—of top importance.

f. *The Board of Decorations*. This was the least important of the cabinet boards, being responsible for all official awards and decorations.

g. *The Central Aviation Research Institute*. This was the national avaition planning board, abolished in September 1945.

h. *The Synthetic Projects Board*. This was the wartime cabinet planning board, also abolished in September 1945.

i. *The Technological Board*. This board, established in January 1942, was responsible for technological developments, patents, standards, and the like, during the war. It was abolished in September 1945, and its Bureau of Patents and Standards transferred to the newly organized Ministry of Commerce and Industry.

j. *The Board of Investigation*. Established in September 1945 for the planning and coordination of postwar programs, it replaced the Synthetic Projects Board and was in turn replaced in December 1945 by the Cabinet councillors room, established by Imperial Ordinance No. 645 of 1945.

k. *The Investigation Council for the War of Greater East Asia*, subsequently renamed *The Investigation Council of the War*. This board was established in January 1946 by Imperial Ordinance No. 647 of 1945 for the purpose of investigating the causes of the war and determining how a recurrence could be prevented. It was abolished in October 1946.

l. *The Board of Postwar Rehabilitation*. Established on November 1, 1945, by Imperial Ordinance No. 621 of 1945 to plan and undertake the reconstruction of war-torn Japan, this board has become one of the most important special executive agencies of the government. Upon the dissolution of the Home Ministry in January 1948, the Land or Public Works Bureau was transferred to the Board of Reconstruction and there have been several proposals for elevating the Board to the status of a ministry.

m. *The Board of Information*. This agency, established under the second Konoye Cabinet in 1940 for censorship, propaganda and public opinion control purposes, lasted but a few months after the war. An effort was made in October 1945 to transform it into a peacetime organization, but the taint and vestiges of wartime control remained, and under the urging of Government Section in November and December, the Japanese Government finally disbanded it on January 1, 1946. Some of its personnel and responsibilities were transferred to the Home Ministry.

n. *The Board of Communications*. The past incarnations this agency has gone through would fill a volume. During the war, the Ministry of Transportation and Communications was reorganized in connection with a complete overhauling of all mobilization and war production agencies, and the Board of Communications was set up as an independent cabinet board. Mail, telephone, telegraph and radio, as well as postal savings and insurance were managed by this board. At the close of the war it was composed of a Secretariat, seven bureaus and local offices. The bureaus were:

General Affairs—Planning, personnel and property.
Business Affairs—Mail, telephone and telegraph.
Engineering—Maintenance.
Insurance and savings—Postal savings, etc.
Superintendence of Communications—Control and censorship.
Electric Waves—Radio.
Reconstruction of Electric Communication—construction.

In an effort to eliminate wartime controls and organize on a more efficient basis, the

board underwent several reorganizations The Business Bureau and the Control Bureau were abolished in October 1945 and the Postal and Telegraph Bureaus established. By Imperial Ordinance No. 54 of 1946, a Bureau of Building and Repairs was established and the Bureau of Reconstruction revamped into a Materials Bureau.

Typical of the method of operation and *raison d'etre* of changes in organization undertaken by the Japanese bureaucracy is the story of the elevation of the Board to a ministry. Early in 1946, a movement to secure this result was initiated in Japanese political circles, the protagonist being the vice president of the board, who was politically ambitious and hoped by this means to secure a seat in the Cabinet Means were found to procure the

[illegible]

pay living allowances It was openly argued that the president of the board did not have sufficient prestige as such to secure cabinet approval of payment of allowances in default or of increased allowances Considerable pressure was exerted and, following the April general elections, the newly appointed Yoshida Cabinet submitted to SCAP a formal request for permission to create a communications ministry After fully considering the several arguments, General Whitney recommended to the Supreme Commander that since no primary Occupation objective was involved, the question be treated as purely a domestic one, for the Japanese themselves to settle General MacArthur approved this recommendation and the issue was left entirely in the hands of the Cabinet. On July 1, 1946, by Imperial Ordinance No. 343 of 1946, the Board of Communications became a ministry

o. *Economic Stabilization Board* This, the most important of all the Cabinet boards, was established in September 1946 by Imperial Ordinance No. 380 of 1946. Vested with sweeping powers, it became responsible for the formulation of over-all policies and the administration of controls for the economic rehabilitation of Japan.

p. *The Price Board* Another agency for controlling the economy, this board was established in August 1946, by Imperial Ordinance No. 381 of 1946 In the same group fall the Office for Newsprint Allocation, established January 1, 1947, by Imperial Ordinance No 516 of 1946, and the Economic Reconstruction and Reorganization Committee, established in February 1947, by Imperial Ordinance No. 41 of 1947.

q. *The Board of Demobilization* This board, established in July 1946, by Imperial Ordinance No 314 and 315 of 1946, took the place of the first and second demobilization ministries.

10. The Ministries

In organization, every ministry follows much the same pattern as the Cabinet boards and agencies Immediately below the Minister are the Vice Minister, the Parliamentary Vice Minister and the Parliamentary Councillor, the last two being his Diet contact and liaison men. The Minister's Secretariat has charge of personnel, records, pay and other administrative matters The operating organization may be divided into boards, divisions, bureaus, and sections, in that order of subdivision, though usually the Bureau is the customary top administrative unit. Boards and committees are frequently attached to the Ministry in a semiautonomous status or advisory capacity. Prior to the effectuation of the new Constitution, the entire problem of organization rested with the Cabinet, which could by imperial ordinance—that is, with the approval of the Privy Council and by exercise of the Emperor's authority under article 10 of the Meiji Constitution*—establish or reorganize

* Article X The Emperor determines the organization of the different branches of the administration and the salaries of all civil and military officers, and appoints and dismisses the same Exceptions especially provided for in the present Constitution or in other laws, shall be in accordance with the respective provisions (bearing thereon) ' See Appendix C. 1, The Meiji Constitution

ministries without reference to the Diet. The executive has been constantly revamped to suit the exigencies of a particular situation, without consideration of or adherence to any over-all plan and usually without any considered study of the matter. Much progress has been made, however, in the field of proper planning, while the limitations imposed by the new Constitution operate as a brake on ill-considered shifts and changes.

a. *The Ministry of Foreign Affairs.* In August 1945 this Ministry was composed of four bureaus: Diplomatic affairs, wartime economic affairs, treaties, and investigations. With the abolition of the Greater East Asia Ministry by an imperial ordinance of August 26, 1945, many of its officials and much of its responsibility were transferred to a newly created Control Bureau. As noted in the section on the control of Japanese external affairs the Japanese Foreign Office early in the Occupation, acting under a misconception as to the true status of the Japanese Government under the Occupation, behaved as though it were conducting international relations for a sovereign government. This misconception was soon dispelled however, and the need to continue operations with a fullfleged foreign office organization disappeared. In January 1946 there was a reorganization of the Ministry, resulting in the abolition of the Diplomatic Affairs and Economic Affairs Bureaus and the establishment of a General Affairs Bureau, a Public Relations Office and a Diplomatist's Institute. It would be reasonable to assume that under a military occupation the personnel of the Foreign Ministry would be severely curtailed, and this did take place, but at the same time there was a rapid and continuous expansion in the personnel of the Central Liaison Office, an organization set up at the beginning of the Occupation to handle all liaison between General Headquarters, SCAP and the Japanese Government. Beginning with nine branch offices and six branch committees and staffed with foreign service personnel, this organization steadily expanded to the point where it closely paralleled the existing Japanese administrative structure from top to bottom, so that officials of the Central Liaison Office were on hand whenever General Headquarters, subordinate commands or units in the field came into contact with an official Japanese agency and thus were in a position to maintain surveillance over and to influence all relations between Occupation forces and the Japanese Government. As the Occupation progressed the Occupation authorities, utilizing technical channels, came more and more to deal directly with the appropriate functional agencies of the Japanese Government. The continued presence of Central Liaison Office representatives as intermediaries, therefore, became decreasingly necessary and in some instances proved a delaying rather than expediting agency. Consequently, on February 1, 1948, the Central Liaison Office was abolished and its essential offices transferred to the responsible ministries.

b. *The Ministry of Home Affairs.* This Ministry represented the heart and center of the internal administrative bureaucracy and exercised the controls which reached down through regional, prefectural, city, town, and village governments to the ward offices and neighborhood association system to enter, influence and restrict every phase of life for every man, woman and child in Japan. The Local Affairs Bureau administered, controlled, and supervised all local government units. The Police Bureau, as primary agents of direct operation, enforced every law, rescript, regulation and administrative order. They maintained daily contact with and watch over the people. Every office and agency, other than the military, used the police when it wished to impose its will on the individual subject. The Police Bureau maintained a separate and independent chain of command and communication system running directly up from the local police box to the Home Ministry. The National Land Bureau was responsible for public works, such as

road construction, water courses, flood control, city planning and rehabilitation The Board of Shrines administered the affairs of National Shinto, maintaining the close tie-in between church and state that was so significant a feature of the prewar Japanese State During the war the Air-Raid Defense General Headquarters, responsible for all civilian air raid defense, was also attached to the Home Ministry.

Immediately following the surrender, the Home Ministry underwent its first reorganization The Air-Raid Defense General Headquarters was abolished, and a control bureau added, to which later some of the functions exercised by the Greater East Asia Ministry were transferred Police and Public Works Bureaus were enlarged This was all done in September 1945 In October, upon issuance of SCAPIN 93, the "Civil Liberties Directive,"[3] the Police Bureau was again reorganized to do away with the Special Higher Police, notorious for its political oppression In December, upon the issuance of SCAPIN 448,[4] directing the dissolution of all ties between the Japanese Government and National Shinto, the Board of Shrines was abolished In February 1946, at the suggestion of Government Section, the Control Bureau was abolished In September 1946, by Imperial Ordinance 370 of 1946, the investigation Bureau was established, primarily for the purpose of keeping record of clubs, societies and organizations subject to or which might become subject to the provisions of SCAPIN 548, banning all militaristic, ultranationalistic and similar societies and like organizations [5]

c *The Ministries of War and Navy* Pursuant to instructions from this General Headquarters, the ministries were reduced to the first and second demobilization ministries on December 1, 1945 (Imperial Ordinances Nos 674, 675, 680 and 686) On July 1, 1946, they became the Board of Demobilization under the Prime Minister, with first and second demobilization bureaus. This was accomplished by Imperial Ordinances Nos 314 and 315 of 1946 At the same time, prefectural agencies were transferred to the prefectural governments under the name of Local Assistance Bureaus

d *The Ministry of Finance* This ministry administered the regular financial affairs of the government Military finances and all business relating to the imperial household were outside the scope of its operations The Mint and Monopoly Bureaus—the latter controlling the tobacco, salt, and camphor monopolies—were also under the jurisdiction of the Finance Ministry The regular bureaus consisted of revenues, national savings, financing, foreign currencies, accounts, and printing Regional, prefectural and local offices extended its controls down close to the lowest level It has undergone only the reorganization necessary to put it on a peace footing In October 1945, a Board of State Property was established to assume control over former military and naval properties By Imperial Ordinance No 661 of 1945, a Price Board was established on January 1, 1946 to administer price controls In January 1946, by Imperial Ordinance No 69, there was a further reorganization which established four bureaus—Accounts, Revenues, Financial, and Banks—revised the State Property Division, abolished the Bureau of Foreign Currencies, and left untouched the Bureau of Printing, the Price Board, the Mint and the Board of Monopolies To meet the increased and exacting requirements of SCAP's Economic and Scientific Section and of the demands of the Occupation forces, an extensive internal reorganization was undertaken in May, at which time a special financial division was established. The pressure of growing inflation was beginning to make itself felt in widespread demands by gov-

[3]Appendix B 2d, SCAPIN 93, Removal of Restrictions on Political, Civil and Religious Liberties," October 4, 1945

[4]Appendix B 3a, SCAPIN 448, Abolition of Governmental Sponsorship, Support, Perpetuation, Control and Dissemination of State Shinto," December 15, 1945

[5]Appendix B 5a, SCAPIN 548, January 4, 1946.

ernment workers for more pay. As a consequence, the Salaries and Allowances Bureau was established in June by Imperial Ordinance No. 340 of 1946. On August 12, 1946, the Price Board was established directly under the Prime Minister by Imperial Ordinance No. 381, and the Price Board in the Finance Ministry abolished. With the establishment of the Economic Stabilization Board in September, there were additional changes, as many of the responsibilities having to do with SCAP directives were transferred to that new body. Further reorganization was undertaken in April 1947, when a State Property Bureau was substituted for the Board of State Property, the Special Financial Division was abolished and an Administration Bureau established.

All of these many shifts and changes were caused by three pressures. The first of these was the serious economic depression and heavy inflation that followed the war and increased immensely the burden of financial management and administration. The fact that the Finance Ministry had become deeply involved during the war in almost every phase of economic activity, and continued to remain involved further aggravated its difficulties. Furthermore, the bureaucrats in the Finance Ministry were loth to restrict their activities or to surrender a single one of their control measures. Far from reducing the Finance Ministry they actually enlarged it to make room for the many officials who wanted to maintain close liaison between private and public financial agencies. This constituted the second of the pressures. The third was, of course, the steadily increasing demands of the Occupation and the requirements of Occupation directives for the accounting for and preservation of property of United Nations Nationals and many another problem arising out of the war.

e. *The Ministry of Justice.* This Ministry controlled the courts, the procurators and the prisons. It had three bureaus, Civil Affairs, handling courts, lawyers, bankruptcy, arbitration, the civil codes; Criminal Affairs, handling the prosecution and trial of criminal cases, thought control cases and economic crimes prosecutions; and the Penal Administration Bureau, handling prisons, paroles, and juvenile affairs. Under the central organization was the Supreme Court, 7 courts of appeal, 47 district courts, and a large number of local courts. Procurators' offices were attached to each court. The Ministry of Justice underwent no substantial change until the new Constitution went into effect, save that the thoughts section of the Criminal Affairs Bureau and the fourth section of the Penal Administration Bureau, responsible for "thought criminals," were abolished in October 1945, pursuant to the "civil liberties" directive.

f. *The Ministry of Welfare.* This Ministry appears to have devoted itself largely to mobilizing the civilian population for the war effort and to the care of veterans. In August 1945, it had three bureaus, Health Promotion, Health, and Labor Service, two Divisions, Mobilization and Guidance, and a Relief Board for Veterans having two bureaus. In September and October 1945, the Labor Service Bureau, Mobilization and Guidance Divisions were abolished and five new bureaus established, Insurance, Social Affairs, Temporary Infectious Diseases, Labor and Labor Administration. These changes were due not only to the necessity for demobilization and demilitarization, but to strong pressure from SCAP's Public Health and Welfare Section for a complete reorientation of welfare responsibilities. The Medical Treatment Bureau was established in February 1946. The Health Promotion Bureau was abolished in March 1946, as was the Temporary Infectious Disease Bureau. Meanwhile, following the abolition of the Relief Board for Veterans in February (Imperial Ordinance No. 75 of 1946), a Repatriates Relief Board was established in March, under Imperial Ordinance No. 130 of 1946. This was made necessary by SCAP's insistence that ex-service personnel should receive no special or separate treatment. By Imperial Ordinance No. 517 of 1946, the

Medical Treatment Bureau became the Medical Bureau, the Health Bureau became the Public Health Bureau and a Prevention Bureau was established. In the meantime, the pressure for extension of social service activities increased steadily and, in the spring of 1947, the Labor Bureau became the Employment Security Bureau, and a Women's and Children's Bureau was established

g *The Ministry of Education* Exercising less actual control but fully as much influence as the all powerful Home Ministry, the Ministry of Education was an important agency for the training and indoctrination of all Japanese, both youths and adults It controlled all schools, public and private, much scientific research, all religion, other than National Shinto, and the liberal arts Its bureaus were Learning and Science, Student Mobilization, Technical Education, and Education In September 1945, the Student Mobilization Bureau became the Bureau of Physical Training In October 1945, the National Education Bureau became the School Education Bureau, the Bureau of Text Books was established, the Technical Education Bureau was abolished and a Social Education Bureau established An Acceptability Inquiry Board was established in May 1946, to review the appointment of teachers. A Research Bureau was established in January 1947

h. *The Ministry of Agriculture and Forestry* Of all the ministries, this one has probably undergone the least reorganization Of its original 10 bureaus—General Affairs, Agricultural Administration, Forestry, Fishery, Fibre, Life Commodity, Material and Resources, Labor, Horse Administration, and Staple Food Administration—three, General Affairs, Material and Resources and Labor have been abolished, the Horse Administration has become the Livestock Bureau, and two have been added: Land Development and Statistics and Surveys

i *The Ministry of Commerce and Industry* replaced the Ministry of Munitions in September 1945 The Ministry of Munitions had been organized in 1943 to mobilize the war effort It was given almost complete control over industrial production in Japan, with extensive powers over transportation and labor matters. With the termination of the war, it was abolished, to be replaced by the Ministry of Commerce and Industry with nine bureaus General Affairs, Commercial Affairs, Industrial Affairs, Fibre (renamed Textile), Mining, Fuel, Electric Power, Adjustment, and Patents and Standards (the Adjustment Division controlled the aircraft industry) The General Affairs Bureau was abolished in January 1946, only to be re-established in November of that year In December 1945, the Board of Trade and the Coal Board were established In November 1946 the ministry underwent a major reorganization, under Imperial Ordinance No 530. Commercial Affairs, Industrial Affairs and Adjustment Bureaus were abolished and the following bureaus established Chemistry, Machinery, Industrial Reconstruction, and Reparations Enforcement All of the changes were undertaken for the purpose of rendering the agency more efficient in undertaking the economic reconstruction of Japan and in carrying out SCAP directives.

j *The Ministry of Transportation* Of all the ministries, Transportation and Communications have been under the most strain, due to the fact that, through operation of all communication and transportation facilities and the employment of hundred of thousands of workers, they have been subjected to the heaviest pressure from organized labor and at the same time have offered the most promising objects of political maneuvering One contest that has been carried on incessantly, with no solution yet reached, is the important one of whether seamen's affairs should be managed by Transportation or Labor, and whether Seamen's Insurance should be under Welfare, Labor or Transportation. The Ministry of Transportation controlled railway transportation (the Government owning and operating most of the railways), freight and express,

road transportation, civil aviation, Maritime transportation (operation of merchant ships had been taken over on a "bare-boat" charter basis by the Civil Merchant Marine Committee during the war), seamen's affairs, stevedoring and all similar or related activities. Before the war, the Ministry embraced both Transportation and Communications. It consisted of a Planning Bureau, a Civil Aviation Board, a Railway Board, a General Maritime Board and a Motor Car Board. The Civil Aviation Board was abolished in November 1945, by order of SCAP. The Planning Board was abolished in January 1946, under Imperial Ordinance No. 67. Under the Railway Board were six bureaus: General Affairs, Traffic and Operations, Construction and Maintenance, Personnel and Supplies, Labor Service, and Materials. Labor Service was abolished in January 1946, and Operations and Electric Bureaus established (Imperial Ordinance No. 67 of 1946). The General Maritime Board was composed of a Bureau of General Affairs (abolished in January 1946, by Imperial Ordinance No. 67), a Maritime Transportation Bureau, a Shipbuilding Bureau, a Seamen's Bureau and a Bureau of Harbors. The Motor Car Board consisted of two bureaus, the Traffic and Supervision Bureau and the Personnel and Supplies Bureau. It was renamed the Land Transportation Control Bureau in January 1946 under Imperial Ordinance No. 67 and reorganized to include three divisions: Motor Cars, Control and Maintenance.*

k. *The Ministry of Communications.* This Ministry was established, as has already been pointed out, on July 1, 1946, by authority of Imperial Ordinance No. 343. As established, it contained eight bureaus: General Affairs, Postal, Electric (Telegraph and Telephone), Engineering, Electric Waves (Radio), Savings and Insurance, Materials, and Building and Repairs. Two more were added in April 1947, by Imperial Ordinance No. 143 and 144—Labor Bureau and Post Office Life Insurance Bureau.

l. *The Munitions Ministry.* See Ministry of Commerce and Industry, supra.

m. *The Ministry of Greater East Asia.* Established in 1943 to coordinate and guide the development of the Greater East Asia Coprosperity Sphere, this ministry was responsible for the systematic exploitation of the occupied areas. All of the overseas companies and all of the occupation governments were under its control. The Ministry was dissolved by the Cabinet Order of August 26, 1945. It had five bureaus: General Affairs, Southern Areas, Trade, China Affairs, and Manchukuo Affairs.[6]

11. Local Extensions of the Central Executive

a. *Regional Administrative Councils.* In July 1943, regional administrative councils were established for the purpose of imposing closer supervision and control of local government and coordinating civil administration of government in furtherance of the war effort. As originally organized, each Region or District, as it was sometimes called, (Chiho) embraced a number of prefectures, except for Hokkaido, which coincided with Hokkaido prefecture. In each region, Bureaus of Home Affairs, Taxes, Monopolies, Agriculture and Forestry, Maritime Affairs, Welfare, Youths, Communications and Railways were established. Later Post Office, Customs and Mines were added. The chiefs of these bureaus, with the governors and the chiefs of police of the prefectures included, governed the region. A president was appointed by the Prime Minister, and a secretariat was provided.

In June 1945 the Regional Administrative Councils were abolished and Regional Superintendencies General were established. These were organized "with the exclusive object of meeting the exigencies of the war situation. They were given the form and complexion of a

[6]Appendix D: 3, Greater East Asia Ministry. (Report of Conference, November 22, 1945.)

*It is to be noted that roads, canals and rivers come under the Public Works Bureau of the Home Ministry.

centralized government, with the object of administering local affairs with authoritarian thoroughness."[6] The real purpose of the change was to provide for the anticipated invasion emergency, when the central government might become disorganized. The number was reduced from nine to eight and each region coincided with a military district The military counterpart of the president was the military district commander

In September 1945, the Japanese Government requested permission to dissolve these superintendencies general and establish in their place Regional Administrative Affairs Bureaus, with Regional Administrative Bureaus of Commerce and Industry attached There was some feeling that SCAP should direct the Japanese Government to dissolve the regional organization completely and not replace it, but it was finally decided to permit the Regional Administrative Affairs Bureaus on the theory that they might prove useful agencies for control, should need arise. Approval was granted by SCAPIN 222 The Administrative Affairs Bureaus as organized proved very similar to the original Regional Administrative Councils They remained in existence and operation until late in 1947 when, in conjunction with the enactment of the new local autonomy law, they were abolished

b *Ministries Establish Local Offices* In addition to the regular prefectural and municipal agencies of government, operated under the supervision of the Home Ministry, and the police system, every ministry and other national agency had prefectural and local offices of its own Before the establishment of the regional councils, the channels of command were direct The Regional Administrative Council served to coordinate and exercise general supervision, although each ministry dealt directly with its own regional bureau and in some cases matters were handled outside of the regional organizations As it became clear that local autonomy in local matters would become a fact and the national government would be deprived of its tight controls over prefectures and municipalities, the national government proceeded vastly to expand the web of local offices directly answerable to the national ministries and in most cases duplicating operations conducted by the local governments. So serious did the situation become and so widespread the abuses—in some cases agencies of the national government attempted to take over offices in the prefectural buildings and oust local officials—that SCAP was finally forced to step in The whole subject of separation of areas of jurisdiction between national and local public entities has proved a most difficult one, and it has been necessary again and again to emphasize the nature of the constitutional provisions on this subject (chapter 8), which make it clear that it is for the Diet by law to establish the area and limits of the respective jurisdictions of administration

12. Changes Wrought by the New Constitution

Heretofore, the organization of the national government has been considered down to May 3, 1947, the date upon which the new Constitution became effective. This document radically altered the situation.[7] As has already been pointed out, it contained specific guarantees of local autonomy and left it for the Diet to determine where the dividing line should be placed But far more than that, in place of the old predominant executive, it established three equal and largely independent branches of government, executive, legislative and judicial. It provided a basis of law for government and made all officials answerable in law for the exercise of their authority. The Diet was made the "highest organ of state power" and the "sole law-making organ." The Cabinet became the executive head of the State but answerable

[7] Appendix C· 21, The Constitution of Japan

[6] Statement submitted by Japanese Government, October 1945

directly to the Diet and limited in its authority to the execution of the laws enacted by the Diet under the Constitution. It had no independent authority. The judiciary was freed from all executive discipline, held office for good behavior and could not have its compensation reduced during office. The Supreme Court was expressly given the right to pass on the constitutionality of all laws and executive acts, and was granted the whole rule-making power, so that it could administer its own affairs and the business of the courts without executive interference. No officer of government and no public agency had any authority to act beyond or outside the scope of statutory law.

Up until May 3, 1947, governmental reorganization was undertaken by the Cabinet in consultation with the Privy Council by means of imperial ordinance and without Diet concurrence or approval. Such statutes as did exist contained the vaguest statements of purpose and set no limits on or definitions of the exercise of power or the extent of responsibility of any office or agency. This was now changed. In a series of laws prepared in consultation with Government Section during the spring of 1947, the organization of the major agencies of government was established, to become effective on May 3. After that time, all major changes had to be accomplished by Diet action, and all minor changes only by virtue of the authority conferred by the Diet. The major changes that have taken place will now be discussed.

13. Creation of a Labor Ministry

Noteworthy among the specific steps undertaken by the Japanese to secure a complete reformation of their governmental structure to conform to the requirements of the Potsdam Declaration, and to implement basic rights guaranteed by the new Constitution, was the establishment on September 1, 1947, of a Labor Ministry. The move had early been proposed, not only by the many Japanese who felt entirely dissatisfied with the work on labor problems being performed by the conservative and bureaucratic Welfare Ministry, but also by many officials in SCAP. Throughout 1946 SCAP held consultations with the Ministry of Welfare and other Japanese agencies to assist the Japanese Government in preparing for the establishment of such a ministry. In the meantime, however, neither the Shidehara nor the Yoshida Cabinets made any serious move toward the actual establishment, although the Social Democratic Party and indeed all other liberal and radical groups were insistent in their demands that something be done.

In January 1947, when the Yoshida Cabinet almost fell, the Prime Minister undertook to persuade the Social Democrats to join a coalition cabinet. By way of inducement, he proposed the formation of a Labor Ministry and offered the post to the Social Democrats. At the same time, having sought the advice of the Supreme Commander and secured his approval for its establishment, he sent his private secretary to Government Section with a draft "Organization of Ministry of Labor," marked "confidential" by the Japanese and apparently intended to be issued as an imperial ordinance. The "draft" bore no relationship to the plans prepared by the Ministry of Welfare in consultation with SCAP and contained only the vaguest sort of outline.

Government Section rejected this attempt to slip through such a major reorganization without consultation with the agencies and officials most interested and without any attempt at constructive planning. It was quite apparent that the Yoshida Cabinet was interested in the move only as a political maneuver. Following the rejection, officials of the Cabinet Board of Legislation, the Welfare Ministry and the Central Liaison Office were instructed that "it was not the intention of the Supreme Commander to impose any particular form of organization upon (the Japanese Government), they were free to work it out according to their own ideas

but that nothing short of an effective labor agency in government would be acceptable."

As soon as it became apparent that SCAP would not accept anything short of a constructive plan, and the Cabinet crisis having been surmounted in the meantime, Yoshida's enthusiasm for a Labor Ministry waned Nevertheless, consultations between SCAP and Japanese officials on the working level continued throughout the spring, and plans were gradually evolved for the establishment of a satisfactory and effective Labor Ministry

The Yoshida Cabinet fell as a result of the April general election which returned the Social Democrats with a plurality in the House of Representatives Shortly thereafter, the Katayama Coalition Cabinet was formed and without any suggestion from SCAP, a Minister Designate for Labor was included Immediately after taking office, Mr Yonekubo, who was to be Japan's first Labor Minister, called on SCAP to present the new Cabinet's draft of a law establishing the Ministry This bill, representing the fruits of nearly a year of work, was approved by both SCAP and the Cabinet in July and immediately introduced into the Diet The Diet made only one change, deleting a provision that gave to the Cabinet the authority to establish new bureaus without Diet approval, and enacted the bill into law.

As organized, the new Ministry of Labor contained five bureaus. Labor Administration, Labor Standards, Women's and Minors', Employment Security, and Labor Statistics and Research At the same time, the Labor Administrative, Employment Security, and Labor Standards Bureaus in the Welfare Ministry were abolished Some conflicts arose There was strong pressure for the retention of control of all forms of social insurance in the Ministry of Welfare, but it was finally agreed that while administration of the insurance aspects would be handled there, all other matters connected with Workmen's Compensation and Employment Security would fall within the jurisdiction of the Labor Ministry The conflict in jurisdiction between Welfare and Labor on women and children was resolved by giving to labor authority only over employed women and children, but making it responsible for coordinating all other activities in this field

14. Dissolution of the Home Ministry

The Law Abolishing the Home Ministry, enacted by the Diet on December 8, provided for abolition of that once powerful agency of the Japanese Government on December 31, 1947

The date will be a significant one in Japanese history because it marked the end of an institution which had long been the Japanese Government's central policy and control agency for the oppression of the Japanese people An agency similar to the Home Ministry existed as early as 649 A D , but this official organization was established in 1868 with the advent of the Meiji Restoration, and almost immediately became the most important ministry of government For a period of 75 years, because of its broad powers and influence, the Home Ministry held a peculiarly important place in Japanese life. The Police Bureau alone controlled every phase of Japanese domestic economy and dominated the daily life of every family in Japan. The Home Ministry, moreover, by its power to appoint and to remove prefectural governors, to discipline mayors and headmen, and to allot or to withhold funds, dictated to each small community in Japan exactly what should or should not be done. Its army of inspectors, local agents and secret investigators held each local government and subdivision wholly at the mercy of the all-powerful Home Minister in Tokyo

Much of this strict control was stripped away by provisions of the new Constitution ensuring autonomy to local entities and granting to each town and prefecture the right to select and to dismiss their own officials. More of the centralized dictatorship was taken away by various reform laws passed since the surrender.

Much, however, remained to be done. Laws and practices dating back prior to the Meiji Restoration had delegated to the Home Ministry authority not legally conferred but exercised through custom and tradition. Even more important was the complexity of the extra-legal powers, the general prestige and the traditional deference that had accrued to the Home Minister and to his organization. Next to the War and Navy Ministers, the Home Minister represented to the average Japanese the very essence of Imperial authority.

The abjectness of Japanese in approaching even the humblest Japanese policeman and the haughty arrogance of the latter in dealing with a common citizen was noted by every observant prewar visitor to Japan. This attitude had been typical of the privileged positions of the Home Ministry in Japanese affairs.

Home Ministry authority and effectiveness sprang not only from laws and practices whereby that ministry dictated virtually every detail of Japanese daily life but arose also from the fact that Home Ministry personnel was extraordinarily well trained and thoroughly disciplined. The Home Ministry clique has been well-known in Japan. This clique operated not only as an administrative unit but also as a politically conscious group of career men who welded themselves together into a compact and, for control purposes, efficient organization.

For many years the Home Ministry had been the special preserve of a coterie of leaders who, in the past, owed allegiance to the late Prime Minister Takashi Hara, organizer and administrator of the Tokyo city political machine familiarly known as "Japan's Tammany Hall." More recently, especially since the assassination of Prime Minister Hara in 1921, this faction had been under the control of Ichiro Hatoyama who, prior to his purge in May 1947, was the leader of the Liberal party.

Not one of the Home Ministers from the time of Reijiro Wakatsuki in 1926 until the surrender period made any move to use the undoubted powers of the Home Ministry for democratic or for progressive purposes. Instead, even during the period when Wakatsuki himself was in power, the Home Ministry sponsored such repressive legislation as the Peace Preservation Law.

The inner group of Home Ministry officials, installed by Hara and continuing in power for many years thereafter, had close associations with public works contractors, terroristic organizations, black marketeers and operators in commercialized vice and crime. Ordinary officeholders of the Home Ministry did not, of course, participate in the contract awards nor did they grant the protection afforded such illicit operations, nor, as a general rule did the Home Minister himself direct such activities nor profit by them, even if he were aware of the abuses practiced in his name, but the same sinister forces which controlled the activities of the officials and of the Home Minister reaped commissions, extorted bribes and manipulated public activities.

The close personal and political association governing the activities of the Home Office were reinforced by the growth within the Home Ministry, as within all other branches of the Japanese Government, of a highly specialized and closely knit controlling group. Officialism and rigidity of procedure was furthered by special practices inherent in the Home Ministry organization, so that to many Japanese the term bureaucracy meant preeminently the Home Ministry. Particularly after the surrender, those who sought to effect much-needed democratic reforms in the Japanese Government system found themselves resolutely opposed by an entrenched bureaucracy. The bureaucracy was composed of a professional class interested quite as much in the promotion of their own special interests as in the furtherance of national affairs, and it had its heart and nerve center in the Home Ministry.

The Japanese Home Ministry bureaucrat, as a member of a special privileged class, had been intensively narrow-minded. Carefully selected for his work, he had been educated for his

career in certain schools which in the past enjoyed a virtual monopoly in training public officials. He then passed an examination set by bureaucrats, after which his personal qualifications for entering public service were scrutinized by other bureaucrats Once accepted in the fraternity, his contacts, socially and officially, were almost exclusively with the official class. This close professional inbreeding was intensified not only by education but by experience Trained not in public administration but in routine procedure, the Japanese official had little specific preparation for the post he was to fill and little sympathy with those associates who, outside the narrow circle of government service, might possess special knowledge or special skill

Technically the Home Ministry official acted with extreme care not to overstep his proper sphere of authority or to disobey any single rule or regulation Each document drafted in accordance with accepted and prescribed patterns, followed a set and tedious channel This caused innumerable delays, especially when as many as twenty seals and signatures were required to approve even a comparatively unimportant matter. His promotion to a better office, as well as his retention of whatever post he held, depended upon his ability to follow precedent and to pay proper deference to the hierarchy in control.

Few, if any, bureaucrats, either within the Home Ministry or in any Government department, understood that government should be conducted as an instrument of public service Nurtured on the concepts that the Government is all important, that the authority of the state is unchallengable and that the Government alone, and the Home Ministry in particular, knows what is good for the people, the Home Office petty autocrat looked upon himself as the inviolable agent of an infallible Emperor.

Under the new Constitution, with the Government subservient to the wishes of the people, this anachronistic concept was no longer tenable. Instead of being masters of the people, public officials became their servants. This, however, was a concept that the Home Ministry officials proved not only unwilling but unable to comprehend. Realizing that their continued monopoly on experience, knowledge and tradition was at stake, they worked to sabotage so far as they could or dared the revolutionary changes required under the new charter Attempts by outright action, or more subtly by evasion and delay, to undermine the transfer of power from the national government to local entities, and to retain within the frame work of the new Constitution as much as possible of the spirit of the outworn Meiji document, marked the efforts of the Home Ministry to retain its former domination over the lives and liberties of the people Confronted by this continual obstructionism, the first Cabinet under the new Constitution planned the destruction of the Home Ministry On June 27, 1947, the Cabinet recommended the abolition of the Home Ministry, the transfer of many of its functions to local bodies, and the distribution of all other responsibilities among various governmental agencies A bill for this purpose was introduced in the Diet on November 21, passed by the House of Representatives on November 28 and approved by the House of Councillors on December 8

The law abolishing the Home Ministry complements the transfer of powers effected by other recent statutes enacted during the First National Diet The Local Autonomy Law took the control of local affairs from the hands of the central government by granting local autonomy to the prefectural, city, town, and village governments. Decentralization of the police and the establishment of an Attorney General's Office transferred other important functions and responsibilities from the Home Ministry into more appropriate hands, while the Home Ministry's Public Works Bureau was amalgamated with the War Damage Rehabilitation Board to form a Construction Board directly under the Prime Minister. The National Election Management Commission, also

under the Prime Minister, will handle the administration of all elections, formerly a Home Ministry function. A local finance committee was created by a law enacted by the Diet on December 1. Operating at Cabinet level, this committee is charged with the responsibility of drafting a plan of local taxation which will be used as the basis for future legislation.

The remaining functions of the dissolved Home Ministry will be assumed by a provisional Domestic Affairs Bureau, with a secretariat made up of three members, a State Minister, one appointed from among representatives of local bodies, and one designated from among Diet members. This committee will exercise such powers as will remain under the jurisdiction of the Local Affairs Bureau of the Home Ministry after the transfer of Home Ministry powers to other agencies.

On January 1, 1948, this temporary Domestic Affairs Bureau assumed jurisdiction over the police system during the 90-day transitional period, as provided by the new Police Reorganization Law. On March 7, 1948, the end of the 90-day transitional period, the National Public Safety Commission and the Local Public Safety Commissions assumed all police responsibilities.

On December 26 the government announced the appointment of two Democratic Party members of the government to key administrative posts created to take over certain functions of the dissolved Home Ministry: Kozaemon Kimura, incumbent Home Minister, to become president of the Construction Board, and State Minister Giichi Takeda to become chairman of the Local Finance Committee.

The Cabinet session on the same day also decided to appoint Keizo Hayashi, chief of the Local Government Bureau of the Home Ministry, as director of the provisional Domestic Affairs Bureau. A simple 10-minute ceremony wound up the 75-year history of the Home Ministry. At noon on December 27, 1,400 officials of the Ministry heard farewell addresses by Minister Kimura and Vice Minister Mikio Suzuki.

15. Abolition of the Ministry of Justice

While perhaps not as far reaching in its effect, a change comparable with the dissolution of the Home Ministry was the abolition of the Ministry of Justice and the establishment of an Attorney General's Office, in the spring of 1948. The move was the logical step following separation of the judiciary from the executive under the new Constitution. Under the old system the Ministry of Justice had been the agency for enforcing State Policy in the courts and maintaining added controls over the people. Under the new Constitution its existence was no longer justified. At the same time, the need had arisen for an agency to supply legal advice to the government on one hand and to assure protection of the individual against the government on the other. The new Office of the Attorney General created to fill this need included the old Board of Legislation and a newly established Bureau of Civil Liberties.

16. Reorganization of Cabinet Offices

The inauguration of the new Constitution, accompanied by a marked increase in the legal authority of the Prime Minister and the Cabinet, necessitated a Cabinet reorganization, which was undertaken in May 1947. Cabinet orders issued that month established a new subdivision, the Office of the Prime Minister, with a secretariat. Assigned to this office were the Pension Bureau, Statistics Bureau, Board of Reconstruction (subsequently established as the Construction Board), the Demobilization Board, the Prisoners of War Information Board, the Economic Stabilization Board, the Price Board, the Decorations Bureau, the Administrative Investigation Department, the Paper Allocation Board and the Imperial Household Office. Outside of the Prime Minister's Office were the Cabinet Secretariat proper and the

Bureau of Legislation By this reorganization the conduct of internal cabinet business was separated from the administration of the several boards and bureaus directly answerable to the Prime Minister

17. Demilitarization and Demobilization

Predominant among the responsibilities of the Supreme Commander under the Potsdam Declaration and implementing policy directives was the complete demilitarization of the Japanese Government. At the same time the disarmament and demobilization of the Japanese military machine including the repatriation of over five million soldiers, sailors and civilians from overseas had to be carried out promptly and without danger to the Occupation forces [8] Responsibility for demobilization and repatriation was assigned to G–2 and G–3, GHQ, Eighth Army and the Commander, Naval Forces Far East, while the Government Section assumed responsibility for the demilitarization of the civil government and for the removal of militarists and ultranationalists from public office

Under the initial plan the remnants of the Japanese military and naval machine, stripped to their bare essentials, were used to discharge the various responsibilities connected with demilitarization and demobilization On December 1, 1945, with the approval of SCAP, the War and Navy Ministries were reduced to the First and Second Demobilization Ministries. These were combined to form a single Demobilization Board under the Prime Minister on July 1, 1946 [9] By this time there were indications that the professional military men in the demobilization agencies were making a determined effort to retain their organization Large numbers of career army and navy officers were retained on the ground that they were still needed for the work of demobilization. These officers had received temporary exemption from the terms of the purge directive ordering the removal of all career commissioned personnel from public service Despite the reorganization of the demobilization ministries into a cabinet board, the accompanying reduction in over-all size and the transfer of local assistance bureaus to prefectural control, the organization remained top-heavy with high-ranking officers and showed a persistent tendency to hold on to more ex-military and naval personnel than the size or nature of the remaining demobilization duties appeared to warrant. Consequently, on the recommendation of Government Section, the Supreme Commander directed the Commander, Naval Forces Far East and the Eighth Army, to undertake a complete investigation of the demobilization machinery As a result of this investigation the Government Section required the Japanese Government to plan for the complete integration of all demobilization machinery into the regular civil agencies of administration and for the progressive removal of ex-military and naval personnel subject to the purge directive

Following conferences with the Japanese and coordination with the other interested staff sections of GHQ and the field units, SCAPIN 1791 was issued on October 4, 1947 [10] This directive ordered the Japanese Government to dissolve the Demobilization Board by January 1, 1948, transfer on that date mine sweeping and ship maintenance functions and agencies to the Transportation Ministry, transfer remaining demobilization functions and agencies to the Welfare Ministry and prepare a final plan for final and complete integration of all demilitarization and demobilization agencies This plan, presented by the Japanese Government on May 4, 1948 and approved by SCAP, became effective on the 31st of that month. It

---

[8] Appendix B 1d, Demobilization of Japanese Armed Forces, SCAPIN 137, October 14, 1945

[9] Appendix B 1e, Establishment of Demobilization Board, SCAPIN 993, June 1, 1946 including "Outline for Establishment of Demobilization Board"

[10] Appendix B 1f, Reorganization of Demobilization Machinery, SCAPIN 1791, October 4, 1947

provided for discharge of ex-military and ex-naval personnel at the rate of 5 percent a month thereafter and transferred all personnel, pay and administration responsibilities to ministerial control. By its terms demobilization and repatriation were transferred to the Welfare Ministry's Board of Repatriation, while mine sweeping and ship custody were placed under the General Maritime Board of the Transportation Ministry. The plan also provided for the immediate reduction in size and responsibility of the individual agencies and for their complete deactivation when the work was finished.

18. The Imperial Household

The Imperial Household, that extra constitutional ministry which regulated the affairs and managed the property of the imperial family, has gradually decreased in size and importance since the beginning of the Occupation. A stronghold of reaction and feudalism in the past, it had broad economic, political and social ramifications. Owning agricultural and forest lands all over Japan, businesses and business properties, large blocks of securities in key enterprises (a substantial interest for instance in the Yokohama Specie Bank), the Imperial Household Ministry was in a position to exercise important influence upon Japanese economy. Since all official life centered around the Emperor, its political influence was tremendous The tenure of its officials was secure, since in no way was this agency answerable to the government or the law.

The Imperial Household Ministry managed all of the private and business affairs of the imperial family and the imperial princes, regulated court protocol and precedence, controlled court ceremony and in general administered the affairs of the imperial institution. The Minister ranked next to the Lord Keeper of the Privy Seal and the officials were in general the cream of the Bureaucracy and the ranking members of the aristocracy.

Despite the gradual reduction in the scope of its activities and the divesting of the properties under its control, the only substantial reorganization the Imperial Household has undergone is its reduction from the status of a ministry to that of an office under the Prime Minister. The number of officials employed remained substantially the same until comparatively recently, when the Ashida Cabinet undertook to replace the top personnel and to reduce it to a size consistent with its functions. With the adoption of the new Constitution and the removal of the Emperor from active participation in Government, the sole governmental responsibility of the Imperial Household became that of liaison between Government and Emperor. Under the new Constitution, all imperial property became public property. By Diet law, certain real estate was assigned for imperial use, and the Imperial Household undertook the management of this, and continued to administer the private affairs of the imperial family. The size of the family was itself reduced under the Imperial Household Family Law to the Empress Dowager, the Emperor, the Empress, the Crown Prince, the other prince and princesses, and the three brothers of the Emperor, Takamatsu, Mikasa, and Chichibu and their families.

On June 28, 1948 the Diet approved a new National Property Law which will accomplish a reclassification of public property now devoted to imperial use, and leave to the imperial family only the palaces and villas they themselves use. The Shosoin at Nara, the Katsura Villa and Shugakuin Gardens and other properties at Kyoto exclusive of the Omiya Palace, and similar properties will become national parks or national treasures, maintained and preserved for the public benefit.

19. Summary

The charts following show in graphic form the important changes which took place in the national executive from September 1945 to June 1948. The foregoing pages have attempted

little more than straight recording of the facts, since it is still too early for an accurate analysis to be made There are two reasons for this. In the first place, under the Japanese Constitution, so great a degree of flexibility existed in the legal structure of government, and there were so few fixed points of reference, that major changes could be accomplished overnight. Ministries of state, for example, could be created or abolished at will. Complete authority rested with the primary agents or the exercise of the imperial command—the Privy Council and the Cabinet No law in the Western sense of that word stood in the way of action desired by the leader of the group then in power There was no one to give consent, no portion of the population, large or small, to whom the Nation's rulers were in any way responsible under law The primary determining factor was the wishes of the oligarchy, call it military, economic or bureaucratic, the successors of the daimyo, samurai, and court retainers of Shogun and Emperor, a small and tightly interwoven group which constituted the ruling power in Japan. While the effectiveness of this oligarchy was greatly weakened after the surrender, its influence survived and the flexibility continued, with the result that the old system still prevailed until the new Constitution came into effect

Furthermore, no proper plan or planning board existed which had the authority to control governmental reorganization, and the Diet was not strong enough nor did it have the understanding or ability to cope with the situation. It was not until the convening of the First National Diet under the new Constitution that a change became observable. After that time, steady, if slow progress was made toward statutory and budgetary control of the organization and operation of the governmental structure, while at the same time both of the coalition prime ministers, Katayama and Ashida, insisted upon planned and integrated reorganization

Between the surrender and June 1948 a basic change took place which profoundly affected all processes of government: organizational, legislative, operational, and judicial. In September 1945 the organizational process was accomplished by authority of the Emperor and the sole official body that held the determining power was the Privy Council Laws, rescripts, ordinances and appointments passed through and required the approval of this body. Every official of government down to the lowest stratum owed his appointment to the Emperor, processed through the Lord Keeper of the Privy Seal and the Privy Council The so-called Meiji Constitution gave an external gloss—an appearance of regularity—to the structure, but agencies of government were established, reorganized or abolished, governmental authority was conferred or withdrawn, the limits of jurisdiction were defined, and public officials were appointed, empowered and dismissed at the will and whim of those exercising the imperial authority, and without regard to constitutional or other statutory requirements Today, the new Constitution establishes a basic code of authority, vesting sovereignty in the people, establishing in clear and simple terms the shape and nature of the structure of the state and defining how and when any by whom the powers of government may be exercised

In September 1945 the legislative process, by which national policy is determined, was accomplished in secret conclave by those persons and groups immediately surrounding and having access to the Emperor, without legal obligation to consult with or any legal or political accountability to the people or their representatives. They operated without restraint or restriction of any sort, being unofficial, extraconstitutional and for the most part hidden There were no standards, no rules, no references. Today, one body and only one exercises the primary function of policy determination, the Cabinet. It is directed by a Prime Minister appointed by the Diet and a majority of its members must be members of

that body. Cabinet members must appear before the Diet when called upon, to "give answers or explanations." Thus, there is complete accountability. Furthermore, there is an actual check in that funds must be provided by the Diet. Finally, the Diet, as the highest organ of State power, may by law establish governmental policy which cannot be overridden.

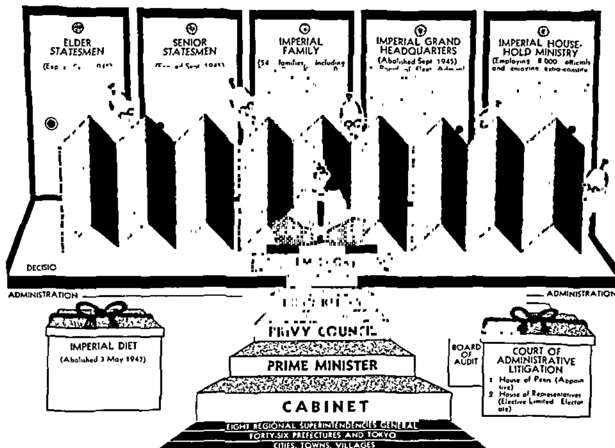
In September 1945, the operational process of government—implementation of policy decisions and execution of the laws—was conducted by a complex and highly centralized organization arranged in the form of a descending hierarchy of agencies. In this hierarchy each agency was resonsible only to the one immediately superior to it and was guided in the conduct of its affairs not by rules or standards established by law, but by the will or whim of the superior office, by custom and tradition and by the dominating influence of family, clan or business connection. Very often the governmental officials did not deal directly with the people and assumed no direct responsibility. They dealt with groups—*oyabun*, *tonari gumi*, associations—each of which administered and directed the affairs of those within its assumed jurisdiction. Leaving out of consideration the military machine, the only agency of government which dealt directly with the people was the police organization, the basic operating agency of the Government.

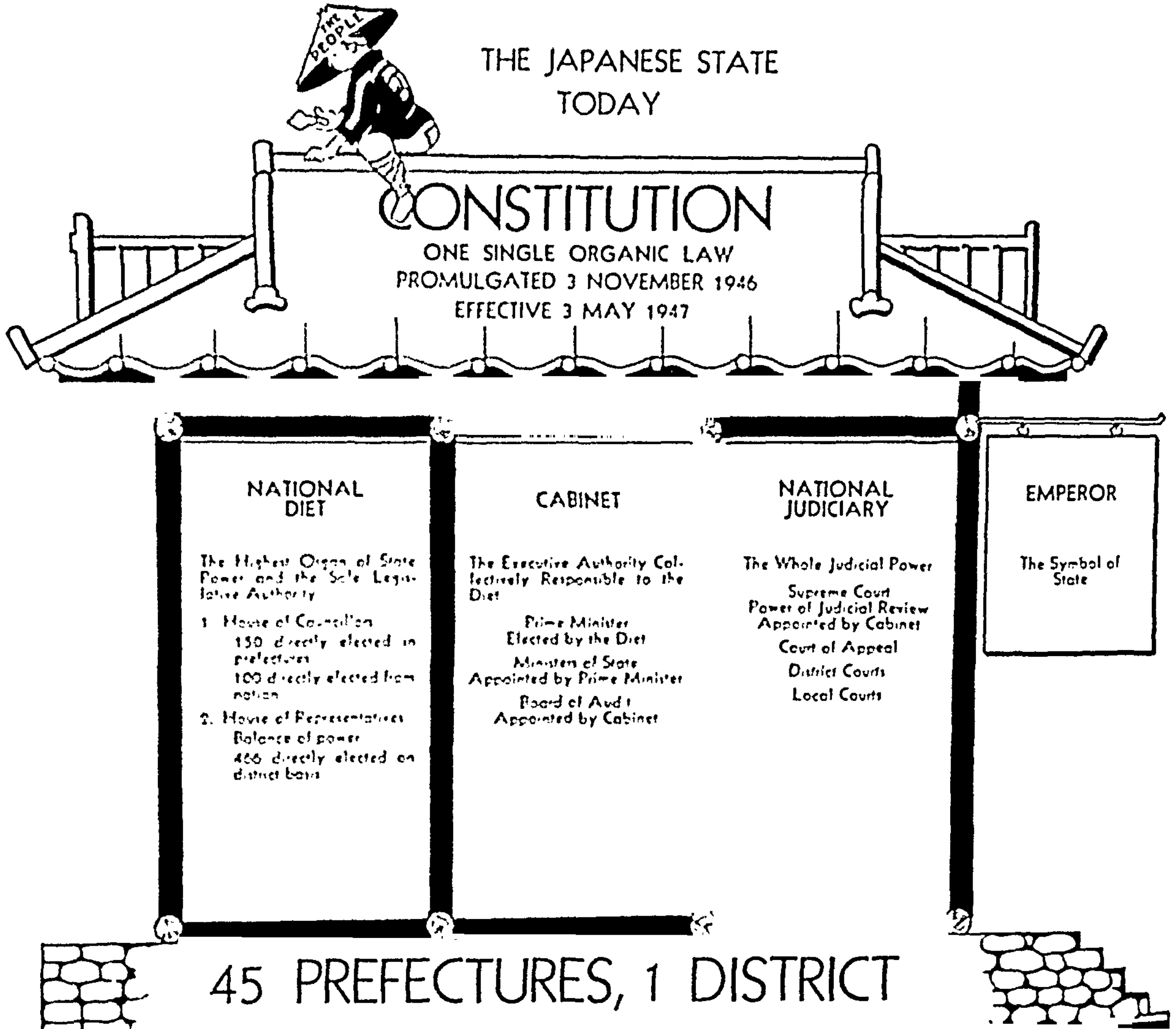
Today, the new Constitution has established a clear separation of powers so that execution of the laws is the responsibility of the Cabinet. Furthermore, all public officials are made the servants of and answerable to the individual citizen. Local autonomy is assured under specific constitutional guarantees. Through any number of statutes drafted with the advice and assistance of SCAP and enacted by the Diet, legislative standards define grants of power, delimit jurisdiction, provide for hearings and appeals and place upon the various agencies the clear legal obligation to discharge specific duties. Each board, office and bureau must now deal directly with the individuals who may be concerned. There is no insulating layer protecting them from accountability. The citizen has his rights and the means to enforce them. He also has the opportunity to know whether the law is being administered in the manner he directed, whether the public funds to which he has contributed are being expended according to law.

Heretofore, the courts were used as instruments of State policy; they were not an independent forum for the settlement of disputes arising between the Government and the individual and between individuals. Not only was the individual unable to appeal to the courts for protection, but he had no rights under the law which gave him protection. The supremacy of the State was absolute.

Today, an independent judiciary has been established in which the whole judicial power has been vested, and the individual has been secured in the enjoyment of certain absolute rights and liberties. The Government is established as the servant of and accountable to the people, and to this end every individual has an absolute right of appeal, where his interests are affected, to the courts to determine by what authority the act was done and to redress or indemnification if he has been wronged, or injuction or reinstatement if no authority exists.

THE JAPANESE STATE PRIOR TO THE SURRENDER





45 Autonomous Prefectures and 1 Autonomous Metropolitan District Subject to Regulation by Law and Administering the Affairs of Counties, Cities, Towns, and Villages

SECTION V

The National Diet

I. Reorganizing the Diet

A truly representative legislative body, based upon universal adult suffrage, responsible to the electorate, free of domination by the executive, and having full legislative powers, including control over the raising and spending of all public moneys, is a primary requisite of any blueprint for democracy under a representative form of government The Japanese Imperial Diet, which came into existence in 1889 by virtue of the Meiji Constitution, failed in every respect to meet these specifications Weak in constitutional and statutory powers and discredited by a tradition of ineffectiveness and venality, even during the relatively few years when liberal ideas and constitutional parliamentarianism seemed to be making headway in Japan, it was completely subservient to the ruling bureaucracy whether civil or military After the Tojo-controlled election of 1942, when 381 out of the 466 seats in the House of Representatives were filled by candidates recommended by the Imperial Rule Assistance Political Society, it became an outright rubber stamp for the executive This was the Diet in existence when the Occupation began

The Diet was not consulted in August 1945 when the Japanese Government decided to surrender On August 24, 1945 it was called into a 2-day extraordinary session to begin September 4 The Emperor appeared at that session, stated that his relationship with the Japanese people as one family had been preserved, and called upon all Japanese to abide by the terms of surrender The Prime Minister followed with a report of Japan's acceptance of the Potsdam Declaration, the imperial rescript by the Emperor prior to signing the surrender instrument, the instrument of surrender and the Supreme Commander's General Order No 1 [1] A comparatively small group of members of the House of Representatives presented a number of interpellations for the Government to answer, directed toward learning the causes of Japan's defeat This session, the eighty-eighth under the old Constitution, lasted just long enough for these proceedings and for the Diet to give its formal approval to the surrender documents It closed on September 6 The Diet's participation in the war's termination, as in its inception, was substantially nil

So far as immediate Occupation objectives were concerned, there was little or no use for the Diet The Supreme Commander's initial policies were effectuated through a series of

[1] Appendix A 3, 6, 9, Appendix B 1a.

directives issued to the Japanese Government which that Government implemented by Imperial Ordinances. Thus, a number of positive steps toward the demilitarization and democratization of the Japanese governmental and social structure were taken by executive rather than by legislative action. Among these were the elimination of governmental functions and agencies dealing with war, munitions, totalitarian economic controls, the restriction of civil liberties and the management of overseas territories. At its eighty-ninth session, which lasted from November 25 to December 18, 1945, the Diet perfunctorily accepted approximately 25 Imperial Ordinances previously issued by the Japanese Government to implement directives of the Supreme Commander.

Important steps for the democratization of the governmental and social structure of Japan were under active consideration early in the Occupation. To have any prospect of permanence, reform measures must be the product of Japanese thinking and action even if inspired by and drawing upon the experience of the Occupation authorities, for any reforms imposed by Occupation fiat alone would not long survive the Occupation. The Diet, as the only governmental body representing the people, even though imperfectly, must actively participate in the formulation as well as the enactment of the legislation necessary to achieve the desired reforms, but in order to do this the Diet itself must first undergo reformation. To begin with, the existing membership, packed with puppets of the former Tojo regime, must be replaced by members more nearly representative of and responsive to the desires of the electorate. For this purpose it was deemed necessary to hold a general election at an early date under conditions which would permit a free expression of the people's desires. The next step would be to lodge in the Diet the full legislative powers of the government. This would require basic revision of the constitutional provisions relating to the position and powers of the Diet and of the laws governing its organization and procedures. Finally, the Diet must be groomed to assume its proper place in the Government and to exercise initiative and responsibility in deciding the vital issues facing the nation, subject only to such external limitations as might be required for the fulfillment or safeguarding of Occupation objectives.

First contact with the Diet was established by means of a brief memorandum of the Supreme Commander which instructed the Japanese Government to establish a procedure for keeping the General Headquarters informed on the progress of legislation throughout the entire legislative process in the Diet.[2] Following this directive, the Bureau of Legislation established the practice of furnishing Government Section with copies of all proposed legislation and of notifying the section of the dates of introduction, committee actions, and passage of all bills in the Diet. Thus, continuously informed on all activities of the Diet, the Government Section was enabled to check all proposed legislation for conformity with Occupation policies, to supervise the legislative process and to advise on reform of the legislature.

The draft of the new Constitution, sponsored by the Japanese Government, was released on March 6, 1946, with the personal endorsement of General MacArthur.[3] Under this proposed Constitution, which guaranteed universal adult suffrage, the Diet would be fully representative of the people; its status would change from that of an impotent debating society in a government run by the executive to "the highest organ of state power" and "sole law-making organ of the state;" the Cabinet would derive its authority from and be responsible to the legislature and to the electorate; finally, the subordinate

[2]Appendix D: 2, Proceedings of the Diet, SCAPIN 179, October 22, 1945.

[3]Appendix C: 9, Constitution of Japan (Cabinet Draft).

position of the House of Representatives within the Diet would be reversed

The first postsurrender general election for members of the House of Representatives was held on April 10, 1946 * Under the Government Section's program for the removal and exclusion of undesirable persons from public office and government service, all candidates for the Diet were screened and those falling within the provisions of the purge directive of January 4, 1946, were disqualified and excluded from the campaign.[4] All candidates who had been endorsed by the IRAPS in the election of 1942 were automatically disqualified and barred Also in preparation for this general election, the election laws were amended in such manner as to broaden the electoral base and prevent interference or coercion by government officials or others, and to minimize fraud Finally, under guidance from Government Section, the Occupation Forces supervised the actual conduct of the election to assure a free and untrammelled exercise of the people's franchise The Diet chosen at this first postwar election was perhaps the most representative and most responsive to the people's will that had ever served Japan, and the Cabinet appointed thereafter was much more representative than any that had ever before existed.

This Diet, convoked on June 20, 1946, as the ninetieth session under the old Constitution, was later to enact the most fundamental reforms of the Japanese political and social structure effected under the Occupation, including the new Constitution, which it passed in October 1946 after introducing some 32 amendments to the Government-sponsored draft [5]

The Government Section's work with the Diet got into stride early in 1946 with the preparation of a manual describing the existing Diet's organization and procedures. This project required the active assistance of the secretariats of both houses and revealed, on the part of those officials, an attitude of ready cooperation and a high degree of efficiency and reliability which did not diminish during the succeeding 2 years of close association and collaboration Early in June 1946, four members of the Government Section were guests of the newly appointed Speaker of the House of Representatives at a dinner given at the Speaker's official residence, which was also attended by the Vice Speaker and the Chief Secretary of the House

During the course of the evening the Government Section representatives, following the policy of inspiring necessary reforms by suggestion and persuasion rather than by direction, raised the subject of reorganizing the Diet in order that it might discharge its functions in accord with the letter and spirit of the proposed new Constitution These suggestions were not warmly received, yet the discussion of that evening was the beginning of a series which eventually culminated in the Diet Law which was enacted on March 19, 1947 [6] An apt contemporary appraisal of the situation as seen by the Legislative Division of the Government Section is contained in the following Memorandum written a few days later for the Chief of the Government Section

' 1 The Chief, Legislative Branch, and his aides have held two meetings with the newly elected Speaker of the House of Representatives and the Chief Secretary of the House At one meeting the Vice Speaker was also present The major purpose of those sessions was to [illegible]

Constitution as the 'highest organ of State power and the supreme law making authority of the State' its machinery must be adequate to permit the full and efficient discharge of those responsibilities A Diet incompetent

[4]Appendix B 5b, Removal and Exclusion of Undesirable Personnel from Public Office, SCAPIN 550, January 4, 1946

[5]Appendix C 21, The Constitution of Japan

[6]Appendix H 19, The Diet Law, Law No 79, March 19, 1947.

*See Section X—Popular Elections

to discharge these duties will discredit representative government.

"2. Under present circumstances the Diet requires vigorous, devoted leadership to pilot it through the period during which the Diet must assume effective control of government, strengthen its machinery, and establish its prestige. The new Speaker, HIGAI Senji, is temperamentally unfit for this responsibility.

"3. Because of long experience in the Japanese bureaucracy, the new Speaker looks upon government with bureaucratic eyes. He shares the prevailing attitude of the professional bureaucrats who regard legislation as a subordinate function of government and look upon members of the House of Representatives as half-educated, incompetent boors and ignoramuses. With the formal legalism that characterizes Japanese bureaucrats, he persistently interposes trivial obstructions to important measures necessary to establish the new Diet on a solid foundation. A typical instance was his hesitation to agree to a select committee of House members to study organization and procedural reform because of possible difficulty in securing funds for that purpose and because members might be 'too busy' during the coming session.

"4. It is most unfortunate that at this critical moment the Diet should be burdened with a leader who is both,

"a. Too weak to guide the interests of the Diet through forceful and constructive leadership, and

"b. Unwilling because of a bureaucratic cast of thought even to concede to the Diet a preeminent role in government.

"Guy J. Swope,
Chief, G.S., Diet. Legislative Branch."

It was, of course, within the power of the Government Section, by appropriate staff action, to bring about the removal of the then Speaker of the House as being unacceptable to the Supreme Commander. But to do so would have involved a degree of direct participation in the internal affairs of the Japanese Government which, under the Supreme Commander's established policy, the Government Section studiously avoided. It was considered preferable, even if more laborious and time-consuming, to work with and through the newly elected and appointed representatives of the Japanese people, for only in this fashion could the fundamental lessons of representative government be expected to take hold among the Japanese. Interestingly enough, this same Speaker was eventually compelled to resign by the action of the Diet members themselves after he had outraged their sense of dignity and position by conniving with the Cabinet in an effort to defeat a House-proposed amendment to the new Constitution. This occurred on August 23, 1946. His successor, Takeshi Yamazaki, duly elected by the members of the House of Representatives, although at that time a comparative unknown in government circles, proved forward-thinking and energetic, and was responsible in large measure for the success of the Diet's legislative program during the ninetieth, ninety-first and ninety-second sessions (August 1946 to May 1947).

The discussions looking toward the reorganization of the Diet proceeded apace and in July 1946, the Chief of Government Section approved a memorandum calling for a number of significant Diet reforms, including the following: (1) A system of permanent standing committees; (2) sufficient time for Diet deliberation of the annual budget; (3) protection of the rights of minority parties and groups; (4) free discussion; (5) increased pay for members; (6) independence of the Diet in determining length of sessions; (7) secretarial assistance for each member; (8) a legislative reference service; and (9) power to subpoena witnesses.

Two months later, another memorandum, recommending even more thoroughgoing reforms of the Diet's structure and procedures, was approved by the Chief, Government Section. In addition to those changes previously recommended, the following were proposed: (1) Salaries and allowances for members to be at least equal to the total pay and allowances of the highest career officials in the government; (2) secretarial assistance and office space for each member to be provided at state expense; (3) franking privilege to be accorded members for mail of an official nature; (4) elimination of practices, procedures, ceremonies, and rituals which tended to dignify government officials at the expense of Diet members; (5) a contingent fund for each House to be used at its discretion; (6) establishment of a Diet Library; (7) a legislative council consisting of a joint committee of the Houses to make a continuing study and to propose revisions of the Diet Law and House Regulations; (8) plenary sessions and committee hearings to

be open to the general public; (9) public hearings by standing committees on bills of general interest and purport; (10) a 10- to 15-minute time limit on interpellations; (11) an annual Diet session of at least 6 months, beginning on a fixed date approximately midway in the fiscal year, and (12) formulation of a new set of regulations for each House

II. The Imperial Diet under the Meiji Constitution

1 Early Impressions of Representative Government

In 1860, three of Japan's leading statesmen were in the United States completing the ratification of the Japanese-American treaty. Having first heard of representative government only seven years before, they decided to visit Washington to observe Congress in action On *their first glimpse of Western lawmaking, one* of the negotiators commented

"One of the men stood up and began to say something in a loud voice as if he were mad When he had finished, [illegible] worn by fishmongers, carpenters, firefighters, etc) and [illegible]

In 1861, three other prominent Japanese statesmen visited England and while there spent some time investigating the parliamentary system In the work quoted above, one of them wrote

"I could not understand at all what they meant by election in politics I was very anxious to know what kind of law that Election Law was and what kind of office Parliament was Those whom I asked simply [illegible] me what they were aiming at It was the strangest thing I had ever seen They often spoke of such and such a man as being a deadly enemy of such and such another man, and yet I found these men eating and drinking at the same table! What did it all mean? I was at a loss what to make of it "

But the Japanese learn quickly When the Tokugawa Shogunate was replaced by the Restoration Government in 1867–68, the much-heralded charter oath was promulgated, proclaiming that· "An assembly widely convoked shall be established, and thus great stress shall be laid upon public opinion " A few months later, a "*Constitution*" *became effective, pro*viding for an "upper" house, to wield all power of government, and a "lower" house, to deliberate The latter was established, according to Article 5 of the "Constitution," with the object of obtaining "open discussion and the opinion of the majority " In 1869, the first deliberative assembly, the *kogisho*, was convened and attended by representatives from each of the 276 clans "The historical importance of the *kogisho*," says H S Quigley, "lay in the recognition of it as the prototype of a more widely representative lower house " An additional step in the direction of popular government was the promulgation in 1871 of an Imperial Rescript abolishing feudalism By this measure, the masses, freed from dependence upon their former feudal lords, were given an opportunity to develop as an effective political force.

Between 1875 and 1885, something less than a generation after the Japanese statesmen referred to above had been perplexed by the United States Congress and British Parliament, a widespread movement advocating establishment of a popular assembly was underway in Japan. Numerous memorials (one with 87,000 signatures) were sent to the government, po-

litical societies were organized, and newspapers joined the movement—all agitating for a parliament, contending that nothing less would satisfy the demand of the people for popular government. Ably directed by men from all over Japan who refused to submit to the domination of the favored Satsuma-Choshu-Tosa-Hizen clansmen, the extensive campaign for parliamentarianism could not be ignored by the powers behind the throne. Consequently, the Emperor issued a decree in 1881 declaring: "We shall, in the twenty-third year of Meiji (1890) establish a Parliament . . . With regard to the limitation upon the Imperial prerogative, and the constitution of the Parliament, We shall decide hereafter and make proclamation in due time."

Hirobumi Ito, a former samurai of Choshu, was assigned the task of finding a solution to this problem. Assisted by Kentaro Kaneko, Myoji Ito, and Tsuyoshiaki Inouye, clansmen attached to the imperial household, Ito devised and framed the Meiji Constitution and the laws and ordinances supplementing it.

Back in Japan after visiting Europe in 1882, Ito began reorganizing the government preparatory to promulgating a constitution. First he reestablished the nobility, whose members were to constitute a majority in the future House of Peers and serve as a safeguard against liberalism. Then he replaced the Council of State with a cabinet, each of whose ministers was made directly responsible to the Emperor. Next he created the Privy Council as an additional check on the projected House of Representatives. Finally, he established a bureaucracy designed to prosecute government policies, regardless of the whims and fancies of the people's representatives.

2. The Meiji Constitution and the Diet[7]

With this much of the spadework completed by 1888, the Constitution, together with the Law of the House, the Election Law for the House of Representatives, the Imperial House Law, the Law of Finance, and the Ordinance Concerning the House of Peers, was promulgated on February 11, 1889, the annual public holiday *Kigensetsu* (Foundation Day). In these enactments, Ito showed his utter contempt for current Western doctrines which regarded lawmaking "as specially falling within the powers of Parliament." That the sovereign and the people have an equal share in enacting laws, he said in his *Commentaries*,

> "arises out of a misconception of the principle of the unity of sovereignty. From the nature of the original polity of this country, it follows that there ought to be one and only one source of the sovereign power of the State. . . . The use of the Diet is to enable the head of the State to perform his function and to keep the State in a well-disciplined, strong and healthy condition. The legislative power is ultimately under the control of the Emperor, while the duty of the Diet is to give advice and consent. Thus between the Emperor and the Diet, a distinction is to be strictly maintained as to their respective positions."[8]

Ito's deceptive scheme of government, bestowed as a gift of the Emperor, deliberately removed control of state affairs farther than ever from the reach of the people and centered it securely in an oligarchy of feudal clansmen, military chieftains, bureaucrats, and *zaibatsu*, blasting all future chances for a democratic form of government. Contrary to popular demand, the Meiji Constitution, instead of creating a law-making organ, provided simply for a *gikai*, meaning talk-club, officially translated as "Diet" after its Prussian prototype. Examination of the Meiji Constitution and the Law of the Houses shows that all powers of state were centered in the executive branch of government and that every conceivable precaution was taken to prevent the talk-club from interfering with national policy.

a. *Powers of the Emperor.* In Western countries, the theory of the divine right of kings gave way several centuries ago to the principle

[7] Appendix C: 1, The Meiji Constitution.

[8] Prince Hirobumi Ito published his commentary in 1889, a document which is regarded as the authoritative interpretation of the Meiji Constitution: *Commentary on The Constitution of the Empire of Japan* (Trans. by Miyoji Ito, Third Edition, Tokyo, 1931) pp. 9–10.

that sovereignty resides in the people and that governments derive their powers from the governed Upon this premise, most Occidental nations can be classified either as governments of union of powers, like Great Britain, where the legislative branch is supreme and the other branches are its agents, or governments of separation of powers, such as the United States, where the several branches are coordinate in rank. The distinction between the two types is not significant, since both have a common ultimate source of authority in the people

In Japan under the Meiji Constitution, the situation was reversed While the Japanese government was one of union of powers, the sole constituent authority was an emperor, "sacred and inviolable," combining in himself the rights of sovereignty and exercising them in accordance with the generous provisions of a constitution written under his supervision The following powers of government, which in countries like England and the United States are exercised by the elected representatives of the people, in Japan were denied the elected members of the Diet and were centered, by the terms of the Constitution, in the Emperor, or rather in the imperially-appointed officials of the executive branch.

"The Emperor exercises the legislative power with the consent of the Imperial Diet

" . determines the organization of the different [illegible]

[illegible]

[illegible]

". . declares war, makes peace, and concludes treaties

" confers titles of nobility, rank, orders and other marks of honor

" orders amnesty, pardon, commutation of punishment and rehabilitation

" issues, when the Imperial Diet is not sitting, imperial ordinances in the place of law

" issues Ordinances necessary for the carrying out of the laws, or for the maintenance of the public peace and order, and for the promotion of the welfare of the subject '

Even without these powers, the Diet might have been an important branch of government had it been given control over the public purse But the Meiji Constitution removed the nation's finances from popular control as certainly as it did the management of foreign affairs The expenditures of the imperial house were placed beyond the reach of the Diet "except in case an increase thereof is found necessary " The bulk of the state's finances was removed from popular control by the constitutional stipulation that those "already fixed expenditures based upon the power appertaining to the Emperor and such expenditures as may have arisen by the effect of law, or that appertain to the legal obligations of the government, shall be neither rejected nor reduced by the imperial diet . " In special cases, the government could call upon the Diet for a "continuing expenditure fund," while for deficiencies a "reserve fund" was provided in the budget When the Diet was not in session, the government could "take all necessary financial measures, by means of an imperial ordinance," and if for any reason the Diet failed to vote the budget, the government could "carry out the budget of the preceding year "

Having denied the Diet jurisdiction over finances, the administrative branches, the armed forces, foreign affairs, and the legislative function in general, Ito and his associates took precautions against possible amendments to the Constitution at a future date by the pressure of public opinion While Article 73 provided that any proposed amendment "shall be submitted to the imperial Diet by Imperial Order," the preamble made it clear that only the Emperor "shall assume the initiative right," and in no other manner shall "our subjects be permitted to attempt any alteration thereof " Needless to say, no project for amending the Meiji Constitution was ever submitted to the Diet. Such a suggestion would have been interpreted as a clear violation of the Peace Preservation Law.* Having devised what he considered an ideal oligarchical system of

*The Peace Preservation Law, first enacted in 1925, limited the right of the people freely to express themselves, to assemble, and through progressive provisions it became increasingly more stringent until in 1928 a provision was inserted which proscribed "dangerous thoughts "

government, Ito fortified it in the Imperial Oath of 1889, which stated in part, "We, the Successor to the prosperous Throne of Our Predecessors, do humbly and solemnly swear to the Imperial Founder of Our House and to Our other Imperial Ancestors that, in pursuance of a great policy coextensive with the Heavens and with the Earth, We shall maintain and secure from decline the ancient form of government."

In still other ways, Ito set up constitutional safeguards against the assumption of power by the Diet. A bill passed by both Houses did not become law until the Emperor sanctioned it and ordered it promulgated and executed. The Diet was convoked, opened, closed, and prorogued, and the House of Representatives dissolved, by imperial order. The Constitution limited the annual Diet session to 3 months and provided for prolonging it, as well as for calling an extraordinary session, only by imperial order. Ministers of state and government delegates were privileged at any time to "take seats and speak in either House."

b. *Functions of the Diet.* The functions reserved to the Diet by the Meiji Constitution were six in number, to wit: (1) Every law required the Diet's consent, (2) both Houses voted upon government bills submitted to them and could initiate bills, (3) both Houses could make representations to the government, (4) present addresses to the Emperor, (5) receive petitions presented by "subjects," and (6) make "rules necessary for the management of their internal affairs." In short, the members of the Diet, within limits, were empowered by the Constitution to talk.

Ito explained that the ordinary Diet session was limited to three months "so as to avoid the endless dilation of deliberations." But, fearing that the people's representatives might get out of hand despite this limitation, he provided for a House of Peers "to check the evil tendencies of irresponsible discussions." While Ito in his *Commentaries* could offer no reason for establishing the popularly elected lower House, he was convinced of the necessity of a House of Peers, representing "the higher grades of society, to preserve an equilibrium between political powers, to restrain the undue influence of political parties . . . to secure the stability of the Constitution, to be an instrument for maintaining harmony between the governing and the governed and to permanently sustain the prosperity of the country and the happiness of the people." The House of Peers, he said, would represent "the prudence, experience and perseverance of the people, by assembling together men who have rendered signal service to the state, men of erudition and men of great wealth." Although both Houses of the Diet were authorized to initiate legislation, Ito admonished them instead to leave the framing of laws to the government. Should the Diet, he argued, "proceed to draw up clause after clause of a law according to the opinions of the majority, much delay would be very often caused in the progress of the debate thereon, or the draft itself would not be free from the defect of crudeness and lack of arrangement. It would be far wiser to rely for such work upon the skill and experience of the commissioners of the government." Even the men of erudition and great wealth, the Peers, were not to be entrusted with the "endless dilation of deliberations."

c. *Functions of the Kanryo.* In order to appease liberal elements at home and democratic sentiments abroad, an impotent assembly was provided for in the Meiji Constitution, but the national polity, as defined by the *Satcho* clansmen, was to be preserved and perpetuated by government officials.* Ito and his colleagues intended the *kanryo*, or bureaucrats, to operate and maintain the government of Japan. Appointed by a sacred emperor, the *kanryo* not only looked down on the Diet but knew how to hold the people's representatives in a degraded position. The *kanryo* served the real rulers of Japan, the militarists, nobility, *zai-*

*The *Satsuma* and *Choshu* clans merged to form the *Satcho* clan to overthrow the Tokugawa Shogunate.

batsu, and professional politicians, to the exclusion of labor representatives, farmers, intellectuals, and all others who failed to champion the aims and traditions of the feudal oligarchy.* Consolidated as the backbone supporters of those directly below the Emperor, these permanent government officials were chiefs of departments and sections in the various ministries and served as government delegates during sessions of the Diet. In the course of time, they moved up the ladder from bureau chiefs to assistants to the prime minister and became directors of quasi-government agencies, government banks and corporations, thereby becoming wealthy Their ultimate aim was to be appointed to the House of Peers, where they could devote the remainder of their lives to politics, keeping constantly in contact with the upper classes and securing appointments to important imperial agencies The lucky few reached the Privy Council and discussed and deliberated imperial ordinances and rescripts and important bills passed by the Diet. In this manner, they became the watchdogs of the prerogatives of the ruling classes, preventing the Diet from interpreting the Constitution in such a way as to jeopardize the interests of the collective dictatorship revolving about the throne. Occupying important posts in the imperial household ministry and the courts, in addition to membership in the House of Peers and the Privy Council, the *kanryo* were able to beat down movements calculated to increase the people's voice in government by declaring them destructive of the Constitution and therefore subversive Having had a part in drafting the Meiji Constitution and its supplementary laws, they set themselves up as permanent guardians of the system of government thus created. In league with the *gunbatsu*,** they joined or abandoned political parties and *zaibatsu* groups almost at will, awarding profitable government contracts and bounties, selling government property and land, and dispensing numerous favors. The *kanryo* protected their system against popular encroachment by appeasing in one way or another the overly ambitious political bosses and the more influential members of the House of Representatives.

3. The Imperial Law of the Houses

Had the framers of the Ito system of government been as certain of the tractability and diffidence of the masses as have been many of the so-called authorities on Japanese character, they should have felt perfectly secure with a divine Emperor, a streamlined and extremely restrictive constitution, a House of Peers, and a purposeful and unyielding bureaucracy But such was not the case In order to make doubly sure that a popularly elected lower House would never usurp powers delegated to the oligarchy, Ito's group framed and promulgated concurrently with the Meiji Constitution the Imperial Law of the Houses and the Ordinance Concerning the House of Peers As a law, the former could be amended only with the approval of both Houses; the latter, an ordinance, needed nothing more than the approval of the Peers to amend its provisions. In other words, the House of Peers could guard the Law of the Houses against the intrusion of public opinion, while the Ordinance Concerning the House of Peers was none of the public's business As an instrument for degrading and debasing representative government and simultaneously exalting appointed government officials, the Imperial Law of the Houses had no parallel among civilized nations.

a. *Restrictions on Public Opinion* The Law of the Houses contained 99 articles Of these, 27 were designed further to restrain the people in keeping with the letter and the spirit of the Constitution. Besides a number of provisions pertaining to Diet convocation, opening, extension, closing, and prorogation, all by im-

*Zaibatsu is a term used to designate representatives of financial, business, or industrial classes.

**Gunbatsu is the term used to designate career military officers.

perial order, and stipulations requiring the support of 20 or 30 members for introducing and moving to amend bills and for questioning and memorializing the government, the Law of the Houses contained clauses for curbing the Diet in the following ways:

(1) Exclusion of the public from committee meetings.

(2) Disallowance of Diet interim committees except by government consent.

(3) Precedence of government bills over member bills; Diet examination of government bills omitted upon demand of government; government privileged to amend or withdraw a government bill after its introduction; process of three readings omitted upon demand of government; bills passed by Diet promulgated at the government's pleasure prior to the beginning of the succeeding session.

(4) Diet deliberations behind closed doors upon demand of government.

(5) Budget committee of each House limited to 21 days for examining the annual budget.

(6) Petitions for amending the Constitution and those pertaining to administration of justice and administrative litigation prohibited; petitions required to be in the form of a prayer, omitting remarks disrespectful of the Imperial Family or insulting to the government or the Diet.

(7) Diet permitted no direct contact whatever with the people; neither House allowed to subpoena witnesses or dispatch its members for investigations, nor to correspond with any government office or local assembly except through a minister of state or his delegate.

(8) Request of either House for secret documents furnished at the government's discretion.

(9) Members prohibited from making remarks in either chamber implying disrespect of the imperial house.

(10) No standing committees—*ad hoc* committees only.

Not a single article made reference to the rights, privileges, welfare, protection, or even the existence of "subjects"—except to refuse them contact with their elected representatives.

b. *Subordination of Diet to Government Officials.* Numerous other articles of the Law of the Houses subordinated the legislative branch to the executive and the members of the elective chamber to government officials.

(1) Chairman and vice chairman of each House nominated by Emperor.

(2) Opening ceremony held in Peers' chamber, the president of the House of Peers presiding.

(3) Chief clerk of each House, *chokunin* rank, appointed by Emperor; secretaries, *sonin* rank, appointed by cabinet. (Representatives had the equivalent of *sonin* rank.)

(4) Expenses of both Houses arbitrarily fixed by Finance Ministry.

(5) Pay of Diet members approximately half that of vice ministers (¥3,000 to ¥5,800).

(6) Diet bills presented to Emperor through a state minister.

(7) State ministers and government delegates privileged to speak at any time at Diet plenary sessions and committee meetings.

(8) Schedule of Diet committee meetings required to be reported to ministers concerned.

(9) Joint committee meetings freely attended by state ministers and their delegates.

c. *Lack of Legislative Machinery.* As a mere organ of discussion, reminded of its impotence and inferiority in countless ways, the Diet was purposely denied the use of the legislative aids, devices, and facilities common to Western assemblies. The most glaring deficiency was the lack of standing committees, a system by which legislators become expert in one or more fields of public policy. While the Law of the Houses authorized so-called standing committees, it stipulated that "the term of the standing committeeship shall last during a single session only." With the month-long new year recess deducted from the ordinary session, "standing committee" members had but 2 months in which to become acquainted with matters submitted to them. But since all legislative bills

without exception were referred to special committees, the budget was the only important item deliberated by a standing committee, a meaningless procedure inasmuch as the Law of the Houses required each budget committee to "finish the examination of the same within 21 days . . and report thereon to the House." Thus, it was impossible for Diet members, minus the aid of library facilities, legislative reference and bill-drafting departments, qualified assistants, the power of subpena, and the authority to conduct investigations, to match the expertness of the bureaucrats, who had an effective monopoly of all pertinent information Public hearings, of course, were entirely unknown ·In no way could Diet committees legislate intelligently or exercise effective surveillance over the execution of laws by administrative agencies

It is a singular fact that the Houses had no contingent fund for their own use The Finance Ministry would have arrogantly brushed aside such a request had either House been so bold as to submit it Like the Diet itself in Ito's scheme of government, its members were accorded treatment commensurate with their humble station Given the equivalent rank of their class government officials, but lacking the privileges and immunities of even the lowest bureaucrats, Diet members of necessity were deferential to their chief clerk, a second-class official, whose prerequisites included an official residence and an official automobile, in addition to life tenure Diet members had no offices, no clerical assistance, no franking privilege Until 1936 there was not even a Diet building

d *Attempts to Amend* Mindful of the severe handicaps under which it attempted to function as the sole agent of the people, the lower House tried desperately between 1930 and 1935 to modify the Law of the Houses In 1933, during the sixty-fourth session, a member bill, carefully prepared by the Diet Renovation Committee and signed by more than 50 members, was introduced in and unanimously passed by the House of Representatives, but rejected by the House of Peers. At the sixty-fifth session and also at the sixty-seventh, the bill was again passed by the House of Representatives, supported by all political parties and groups, and in each instance was rejected by the House of Peers In view of the fact that this measure was designed to increase the power and prestige of lower House officials and members and to decrease the control of Diet procedures by government officials, the Peers, had they made this concession to public opinion, would have been unfaithful to the trust placed in them by the architects of the Meiji system of government

Chief among the modest reforms embodied in this measure, as passed by the House of Representatives, were the following:

(1) Outright election of the Speaker and Vice Speaker for sanction by the throne, eliminating the practice of selecting three candidates for each office, one of whom was nominated by the Emperor.

(2) Installation of the Speaker and Vice Speaker by an imperial ceremony, in order to increase the prestige of lower House officials

(3) Raising the Speaker to [illegible] rank two steps above the Chief Clerk of the House

(4) Provision for a legislative budget, independent of the jurisdiction of the Finance Ministry.

(5) Giving a member bill [illegible] government bill on the [illegible] vote of the House

(6) Revision or [illegible] bills with House amendment [illegible]

(7) [illegible]

[illegible]

(10) Establishment of a permanent committee of the House.

The last proposal was the most important. Its object was to circumvent the constitutional provision limiting the Diet to an annual session of three months. According to the reasoning of the renovation committee: "Although the length of a session is stipulated in the Constitution, this does not mean that an extension cannot be requested. However, it is customary to extend a session nine days at the most, primarily for the purpose of passing a bill which is being deliberated upon. Even during adjournment, the permanent committee would be able to make preliminary investigations on bills to be submitted to the following session.... Thus, in this manner, the shortness of a session can be overcome." Neither the Peers nor the government relished the prospect of a year-around source of embarrassment to the entranched oligarchy, latent in this suggestion of the House of Representatives for a permanent committee.

4. Rise and Fall of Parliamentary Government

Notwithstanding the efforts to regiment the people's thinking and actions and to exclude them from any voice in government whatever, a remarkable degree of responsible government was achieved in Japan between 1890 and 1931. Although the members of all cabinets were appointed by and directly responsible to the Emperor, the Takashi Hara Cabinet, formed in 1918, excepting only the ministers of war, navy, and foreign affairs, was composed of political party members. From 1924 until 1932, every cabinet was organized along the lines of parliamentary government, that is, selected on the basis of election returns. These gains were lost, however, because of fundamental defects in the Meiji Constitution which permitted the enactment of the Peace Preservation Law, the invasion of Manchuria in 1931, and the China Incident in 1936, irrespective of public opinion. Responsible directly to the Emperor under articles 11 and 12 of the Constitution, the war-lords of the army and navy prevented the formation of cabinets of which they disapproved. Because of the constitutional provision for continuing the current budget, the Diet was unable to check the militarists by cutting their appropriations. Politicians, instead of representing the people who elected them to the House of Representatives, took orders from their *gumbatsu-zaibatsu* masters. A few brave champions of popular government pitted their power to ask questions against the military and financial power of the oligarchy of militarists, *zaibatsu*, nobles, bureaucrats, and politicians. Despite their advantages, the reactionary forces took severe beatings at the polls in 1936 and 1937, causing the army and navy to set up a howl for restricting the electorate, reducing the power of the Diet, and revising the Constitution! The results obtained are suggested by Toshio Shiratori, former Ambassador to Italy, who was able to write in 1938:

> "The once widely accepted theory of government which sees in parliament the real center of power now has been completely rejected and the country is fast reverting to totalitarianism, which has been the fundamental principle of Japan's national life for the past thirty centuries."

Prince Konoye completed the downfall of responsible government when he organized the Imperial Rule Assistance Association in 1940–41 and the Imperial Rule Assistance Political Party in 1942. That the forces of popular sovereignty were completely routed is not surprising under the circumstances; what is significant is that they accomplished so much against such overwhelming odds. In this fact lay the hope for popular government in the Japan of the future.

III. *The National Diet under the New Constitution*

1. Constitutional Powers

The new Constitution of Japan, which became effective May 3, 1947, together with the numerous laws and codes supplementing it, represents a drastic revolution in the government of Japan [8] From the standpoint of the national legislature, the following reforms are most significant:

a. Popular sovereignty replaces the sovereignty of the Emperor.

b The Diet is the highest organ of state power

c. An elected House of Councillors replaces the House of Peers

d The Cabinet is responsible to the Diet.

e The Diet law supersedes the repealed imperial l [illegible] of the Houses

f The people are legally delivered from the last vestiges of the feudal heritage.

g The "invisible government" of crown agencies is abolished

The preamble to the new Constitution begins: "We, the Japanese people, acting through our duly elected representatives in the National Diet do proclaim that sovereign power resides with the people " As for the once sacred and inviolable emperor, he "shall not have powers related to government," but functions merely as "the symbol of the State and the unity of the people, deriving his position from the will of the people with whom resides sovereign power," performing, "with the advice and approval of the Cabinet," only such acts as promulgating laws, convoking the Diet, and dissolving the House of Representatives, proclaiming general elections, attesting the appointment of officials, and awarding honors.

Pursuant to the principle of popular sovereignty, the Diet ranks first among the branches of government. The Constitution states that the Diet, consisting of the House of Representatives and the House of Councillors, whose members are elected as representative of all the people, "shall be the highest organ of state power, and shall be the sole law-making organ " Executive power is vested in a Cabinet "collectively responsible to the Diet" and headed by a prime minister "designated from among the members of the Diet by a resolution of the Diet " The crippling financial limitations imposed upon the Diet by the Meiji Constitution have been removed and the principle established that the nation's finances are administered "as the Diet shall determine." No money shall be expended nor shall the state obligate itself, unless so authorized by the Diet The Cabinet prepares budgets and submits them to the Diet for consideration and final decision The Diet may authorize a reserve fund for the use of the Cabinet, but payments from this fund must subsequently be approved by the Diet Exclusively vested in the Diet is the power to levy new taxes or to modify existing taxes All imperial household property has become the property of the state, and expenses for the imperial household are appropriated annually in the budget

The absolute control by the Diet of every aspect of national policy is limited only by the power of the Supreme Court "to determine the constitutionality of any law, or order, regulation or official act " The Japanese Diet, therefore, has considerably more control over national policy and administration than has the United States Congress, but slightly less than the British Parliament. In short, the old *gikai*, or talk-club, has assumed the policy-making powers once exercised by the Cabinet, Privy Council, military boards, *genro*, Imperial Household Ministry, senior statesmen, and the imperial conference. The Cabinet may issue Cabinet orders, not, however, as imperial

[8] Appendix C 21, The Constitution of Japan.

ordinances were formerly issued, but only for the purpose of executing the provisions of the Constitution and of laws enacted by the Diet. The method for amending the Constitution has been simplified, requiring only a two-thirds vote of each House of the Diet and subsequent ratification by a majority of the voters.

2. Genesis of the New Diet Law

Repealing Ito's Law of the Houses, the Diet law, according to the *Official Gazette*, received the "consent of the Imperial Diet" on March 19, 1947, and on April 28 was promulgated by the Emperor, countersigned by all Cabinet Ministers, and approved by the Privy Council —in accordance with articles 6, 55 and 56 respectively of the Meiji Constitution. The order of promulgation read, "I hereby give my sanction, with the approval of the Privy Councillors, to the Diet law for which the concurrence of the Imperial Diet has been obtained and cause the same to be promulgated."

In no respect is the preceding paragraph an accurate description of how this measure became a law. The new Constitution and all laws supplementing it, excepting only the Diet law, were drafted and introduced in the Diet as Cabinet bills in keeping with time-honored procedure; the Diet law alone was drafted by the House of Representatives without the approval of the Cabinet or the collaboration of the House of Peers. In all particulars, it was a piece of legislation initiated by and expressing the will of the only agency in the national government directly representing the people. Accurately stated, the Emperor, the Cabinet, the Privy Council, and the House of Peers gave their consent to a law enacted by the House of Representatives for the Diet of the future, as prescribed by the new Constitution.

"If we assume that the new constitution is a dragon, we can say that the Diet law is its eyes." This refreshing simile was contributed by Kotaro Bando, veteran member of the Lower House, who assisted in drafting the Diet law bill. A simple statement of the origin of the bill, as reported in the *Official Gazette* for December 19, 1946, was made by Makoto Oike, Chief Clerk of the House of Representatives, to the special committee of 36 members appointed by the Speaker to examine this proposal and make recommendations to the House:

"With the establishment of the new Constitution, the supplementary law known as the Diet Law was to be enacted for governing the procedures of the National Diet. This task placed a heavy responsibility on the House itself for formulating a democratic law. On the one hand, the Government appointed the Special Provisional Legislative Investigation Committee to revise the Law of the Houses, and on the other hand, the House of Representatives commissioned 20 of its members, representing all parties, to do the same work. The first meeting of the House group was held on July 6. Throughout the remainder of the harried Diet session, the members carried on vigorous debates and drafted a Diet law bill consisting of 19 chapters. On the basis of this draft, codification of the bill was taken up in earnest following the close of the Diet session on October 12. Each member freely expressed his opinions and deliberated all articles with great seriousness. At 10 or more of these meetings, to which numerous Government experts were invited, discussions were carried on in a spirit of harmony, with the result that this final draft received the approval of all 20 members of the House committee. Government section of GHQ rendered every assistance throughout this period, supplying us with the Legislative Reorganization Act of 1946 as passed by the United States Senate, encouraging the committee to frame a genuinely democratic Diet law, and offering suggestions on numerous occassions for increasing the authority of the National Diet, for which the entire membership of this committee is most grateful."

At the conclusion of two days of vigorous debates, December 19–20, a spokesman for each political party and group represented in the special committee of 36 endorsed the bill. Speaking for the Cooperative Democratic Party Kuniei Uda said: "Following the spirit of the history-making Constitution, we members of the House of Representatives have drafted this Diet Law Bill. In studying the entire measure, clause by clause, we of the Cooperative Democrat Party find it truly democratic and, in addition, endowed with authority. Therefore, we heartily approve this proposal." Michio Hosono, representing the Social Democrat Party, said: "I approve this bill. It contains some unsatisfactory points, but after all, these have to do with operations. Since Diet members will

ordinances were formerly issued, but only for the purpose of executing the provisions of the Constitution and of laws enacted by the Diet. The method for amending the Constitution has been simplified, requiring only a two-thirds vote of each House of the Diet and subsequent ratification by a majority of the voters.

2. Genesis of the New Diet Law

Repealing Ito's Law of the Houses, the Diet law, according to the *Official Gazette*, received the "consent of the Imperial Diet" on March 19, 1947, and on April 28 was promulgated by the Emperor, countersigned by all Cabinet Ministers, and approved by the Privy Council —in accordance with articles 6, 55 and 56 respectively of the Meiji Constitution. The order of promulgation read, "I hereby give my sanction, with the approval of the Privy Councillors, to the Diet law for which the concurrence of the Imperial Diet has been obtained and cause the same to be promulgated."

In no respect is the preceding paragraph an accurate description of how this measure became a law. The new Constitution and all laws supplementing it, excepting only the Diet law, were drafted and introduced in the Diet as Cabinet bills in keeping with time-honored procedure; the Diet law alone was drafted by the House of Representatives without the approval of the Cabinet or the collaboration of the House of Peers. In all particulars, it was a piece of legislation initiated by and expressing the will of the only agency in the national government directly representing the people. Accurately stated, the Emperor, the Cabinet, the Privy Council, and the House of Peers gave their consent to a law enacted by the House of Representatives for the Diet of the future, as prescribed by the new Constitution.

"If we assume that the new constitution is a dragon, we can say that the Diet law is its eyes." This refreshing simile was contributed by Kotaro Bando, veteran member of the Lower House, who assisted in drafting the Diet law bill. A simple statement of the origin of the bill, as reported in the *Official Gazette* for December 19, 1946, was made by Makoto Oike, Chief Clerk of the House of Representatives, to the special committee of 36 members appointed by the Speaker to examine this proposal and make recommendations to the House:

"With the establishment of the new Constitution, the supplementary law known as the Diet Law was to be enacted for governing the procedures of the National Diet. This task placed a heavy responsibility on the House itself for formulating a democratic law. On the one hand, the Government appointed the Special Provisional Legislative Investigation Committee to revise the Law of the Houses, and on the other hand, the House of Representatives commissioned 20 of its members, representing all parties, to do the same work. The first meeting of the House group was held on July 6. Throughout the remainder of the harried Diet session, the members carried on vigorous debates and drafted a Diet law bill consisting of 19 chapters. On the basis of this draft, codification of the bill was taken up in earnest following the close of the Diet session on October 12. Each member freely expressed his opinions and deliberated all articles with great seriousness. At 10 or more of these meetings, to which numerous Government experts were invited, discussions were carried on in a spirit of harmony, with the result that this final draft received the approval of all 20 members of the House committee. Government section of GHQ rendered every assistance throughout this period, supplying us with the Legislative Reorganization Act of 1946 as passed by the United States Senate, encouraging the committee to frame a genuinely democratic Diet law, and offering suggestions on numerous occassions for increasing the authority of the National Diet, for which the entire membership of this committee is most grateful."

At the conclusion of two days of vigorous debates, December 19–20, a spokesman for each political party and group represented in the special committee of 36 endorsed the bill. Speaking for the Cooperative Democratic Party Kuniei Uda said: "Following the spirit of the history-making Constitution, we members of the House of Representatives have drafted this Diet Law Bill. In studying the entire measure, clause by clause, we of the Cooperative Democrat Party find it truly democratic and, in addition, endowed with authority. Therefore, we heartily approve this proposal." Michio Hosono, representing the Social Democrat Party, said: "I approve this bill. It contains some unsatisfactory points, but after all, these have to do with operations. Since Diet members will

"upper" house, will preside over the joint assembly of the Houses at the Opening Ceremony, which presumably will be attended by the Emperor, although the Diet Law is silent on that subject. The latter point is unimportant inasmuch as convocation, not the opening ceremony, as in the past, authorizes the Diet to function The term of the ordinary session is increased from 3 to 5 months, while the term of a special session is determined by the Houses The extension of a session is no longer determined by imperial order, but by the decision of the Houses, the wishes of the House of Representatives prevailing in case of disagreement The chairmen and vice chairmen, as well as the secretaries general, are now elected by the members of the respective Houses, thus completely eliminating the former prerogatives of the Emperor and the Cabinet to appoint them

Article 32 stipulates that "expenditures of each House shall be appropriated independently in the national budget," followed by a subordinate clause which says "The above appropriation shall include a contingent fund " This release from the stranglehold of the Finance Ministry was an occasion for rejoicing among Diet members, including Peers During the Peers committee deliberations on the Diet Law Bill 2 days before Christmas 1946, Viscount Kiko Okochi asked, "What is meant by 'expenditures of the Houses shall be appropriated independently in the national budget'?" He continued, "Reductions of Diet expenditures by the Finance Ministry in the past were unreasonable The Diet and persons connected with the Diet should be treated like human beings [Heretofore the government's idea] was to have members loaf on the job as much as possible so as to prevent them from being active in the affairs of the Houses It was a common practice to have no lights at night Even if the House of Peers Journal did get to our hands, it was a lot of bother and was just as good undelivered . If we did not appear for work, there were no objections raised . If the Diet members fail now to receive treatment due to human beings, there will be no chance for democratic government "

State Minister Uehara advised Viscount Okochi to put his mind at ease "Once the new Constitution is enforced," he said, "there will be no need to worry about these points If part of the budget is appropriated by the Finance Ministry as at present, the Diet cannot function freely If past conditions should prevail, permitting the budget to be modified by the Bureau of Accounting of the Finance Ministry, the Diet, which is to be the central organ of state power, would lose its power to conduct the affairs of the government The Diet must have the right to establish its own budget An independent budget for the legislature of the nation has great significance

For the first time, we have reached a point where good democratic government is possible "

Instead of the disgracefully low salary allowance grudgingly handed out to Diet members in the past by a paternal government, members now receive an annual allowance "not less in amount than the highest pay for government officials in general," that is, not less than vice ministers Moreover, a retirement allowance is provided for members at the end of their Diet service, permitting them, as one member said, to "concentrate on state business and lead the people, free from the anxieties of family affairs " Relief from financial dependence upon corrupt politicians and their benefactors may lead an increasing number of Diet members to place national welfare above personal gain

The Houses are free from numerous humiliating restrictions formerly imposed upon them for no other purpose than to emphasize their impotence and inferiority No longer is the Cabinet permitted to withdraw or amend a government bill already on the agenda of either House without the consent of the House concerned. The Cabinet cannot compel the Houses to hold closed sessions Bills to be promulgated are now reported to the throne through the

franking privilege in the United States As a device for encouraging closer contact between Diet members and their constituents, the frank is a novel idea in Japan, and, regardless of the way it is used, it gives Diet members a privilege heretofore reserved to Government officials.

(2) *Offices and Clerical Assistants* Also calculated to elevate the position of elected representatives, formerly regarded as a low calling, is the Diet Law provision for furnishing each member with an office and one clerical assistant at state expense Throughout Japanese parliamentary history, Diet members have had only such office space and clerical help as their respective political parties could afford because the government refused to appropriate any money for such "wasteful" purposes. In explaining the Diet Law Bill in plenary session, Representative Tanaka said, "[These conveniences will] enable us to devote ourselves faithfully to the state without being bothered by trifling matters "

(3) *Diet Library and Reference Service* Provisions for establishing a Diet library and a bill-drafting and reference service for each House are as novel as those calling for free mailing rights, office space, and clerical assistants Under a system wherein government officials maintained a monopoly of the knowledge required for law-making and drafting all bills, these services were considered unnecessary But the need for them had been felt by Diet members for, as the Diet Law Bill's explainer stated, this need has "hitherto been repeatedly emphasized by our predecessors "

(4) *Free Discussion.* Replacing the Committee of the Whole House, never used once during 57 years of the Diet under the Meiji Constitution, is the system of "free discussion" under which each House must meet at least once every two weeks while the Diet is in session to discuss state policy or other matters in which rank and file members are interested "It is by no means an exaggeration to say," declared Manitsu Tanaka, "that under the existing law we members of the Diet have had practically no chance to express our views unless we participated as members of the budget committee. It is, indeed, a matter for profound regret that the Diet has fallen short of its name as the 'seat of public opinion ' However, by this system of free discussion, it is expected that this weakness of the Diet will be greatly rectified *Since this sytem is for free discussion*, members are enabled freely to express their views and opinions on whatever problem they desire to take up They may be questions to the Cabinet, or expressions of views to either of the speakers, or the party to which they belong By this system questions deviating from the problem under discussion as practiced now in the budget committee meetings will no longer be necessary, enabling this committee to revert to its proper function "

At free discussion sessions, the presiding officers are authorized "to limit time for questioning, debate, or other utterances," so as to prevent filibustering, but "the part of a member's speech omitted because of the time limit may be entered in the Record of Proceedings to such an extent as considered suitable by the House Chairman " Diet members, of course, will not be allowed to enter in the Record long articles, books, and other extraneous matter, as happens so often in the United States Congress A subject under debate, upon the motion of a member, may be put to a vote of the House The attitude of the House thus expressed will not be ignored by a responsible Cabinet The fact that these sessions have been labeled "free discussion" will probably cause them to be employed as sounding boards of opinion by representatives of various parties and groups rather than for conducting the business of the House

(5) *Interpellations.* "Free discussion" is likely to bring about changes in the traditional system of interpellations The practice of questioning Cabinet members at each plenary session may be expected to give way to that of making an "urgent" interpellation only when

the occasion calls for it. Hence, the attendance of Cabinet members at plenary sessions will be less frequent. The procedure whereby a bill is introduced in plenary session and followed immediately by long-winded interpellations of the proposer, usually the government, is set aside by the new procedure of referring a bill directly to committee without the customary explanation of it in plenary session. Either House may, however, if it so desires, request the presence of a Cabinet Minister, or of a member, if he is the introducer, for explanation of an important bill at the time it is submitted to the House. But as a rule, bills will be referred directly to committee, as in the United States Congress, doing away with most of the harangues, called interpellations, which in the past consumed an inordinate amount of the Diet's time.

The interpellation system is valuable and its best features have been retained and improved upon. With just cause, any member may interpellate the government upon the approval of the House chairman; should the latter object, the member may appeal to the House. If the member's request is rejected, still the purport of his interpellation will be entered in the record, affording proof to his constituents that he "interpellated the government." The value of restricting the interpellation device to legitimate uses lies in the fact that Cabinet members will be less inclined to make brief, insolent, and meaningless replies to serious questions, inasmuch as their answers may be put to debate on motion of a member. The opposition will take particular delight in using this weapon to embarrass the government, while members of the government party or parties will employ it to turn the light of public opinion upon the weaknesses in the armor of their antagonists in the House.

(6) *Treatment of Bills*. Another important innovation pertains to the treatment of bills. Any member may introduce a bill without the support of any other members by the simple process of handing it to the House Chairman. Bills brought in by the government do not take precedence over member bills. Excepting those transmitted from the other House, bills die if the committee decides not to report them out, unless within 7 days of the committee's announced decision 20 or more members demand that the bill be brought into plenary session. In the United States House of Representatives, one more than half of the entire membership is required to force a bill out of committee. In order to prevent filibustering by the technique of offering numerous unimportant amendments, a motion to amend a bill reported out of committee must be supported by 20 or more members. If a member bill is passed by one House, the member is privileged to explain his bill in the other House upon its introduction—a right heretofore reserved to the government. The Diet Law Bill, it will be recalled, was explained in the House of Peers by State Minister Uehara because the Law of the Houses had no provision permitting anyone other than a government official to do so. In order to speed up the legislative process, a government bill introduced in one House must within 5 days be submitted to the other House for preliminary examination.

(7) *Standing Committees*. The most significant part of the Diet Law, the chapter dealing with standing committees, parallels in several important respects the United States Legislative Reorganization Act of 1946. The system of standing committees more than anything else differentiates the House of Representatives from the British House of Commons and gives the Diet a strong resemblance to the United States Congress. Whether the Diet becomes "the highest organ of state power and the sole law-making body," or continues to pursue its historic role as a mere organ of discussion, will depend, in the last analysis, upon the degree to which the standing committees use the powers conferred upon them and the skill with which they employ the legislative aids and devices provided in the Diet Law.

If it is kept in mind that the Law of the

Houses, in reality, provided only for *ad hoc* committees, lacking the power, machinery, and time to become acquainted with legislative bills referred to them and subjected at every turn to the rank indignities of imperially appointed government officials, the new system of standing committees can be seen in clearer perspective The Diet law sets up 21 standing committees in each House, one for each major field of jurisdiction, such as foreign affairs, budgets, audit, commerce, transportation, education, labor, and the like, plus steering, library, and disciplinary committees Each member of the Diet must be appointed to at least one of these committees but to no more than three, and once appointed he is privileged to serve throughout his term, 6 years in the House of Councillors and a maximum of 4 years in the House of Representatives Standing committee chairmen are elected by each House, not by the respective committees, thus giving them the important status of House officials, while special committees elect their own chairmen Membership in both standing and special committees "shall be allotted in proportion to the numerical strength of political parties or groups in the respective Houses " Whereas under the Law of the Houses the rule against outsiders attending committee meetings was rigorously adhered to and was approved by a majority of Diet members, hearings are now open to the public except when a committee votes to hold a secret meeting In the past, a minority report was not permitted unless at least one-third of the members of the committee disagreed with the majority position, but now any members who so desire may make a minority report In view of the fact that the House of Representatives in the 1930's waged a bitter fight for the power to establish a permanent lower House committee, only to be defeated by the House of Peers, it is interesting to note that the Diet Law allows standing and special committees to "examine matters entrusted to them only during the term of a session," but at the discretion of the respective Houses one or even all committees may be authorized to conduct investigations between sessions, thus making it possible after all, said Tanaka, "to achieve the objective . . which has been maintained by the House of Representatives for years "

(8) *Qualified Specialists* It was pointed out above that a Diet library will be established, that in connection with it legislative reference and bill-drafting services will be set up, and that Diet members will have clerical assistants. In addition to these aids for members, "each standing committee shall be provided at least two qualified specialists who are not Diet members, and an adequate number of secretarial assistants, all of whom shall receive adequate remuneration and shall not be otherwise employed They cannot occupy any post in the administrative branches of the Government for 2 years following their resignation from a standing committee " Inherent in this plan is the development of a Diet bureaucracy, but to the extent that it provides technicians, working for and not against the legislative branch, who can match and offset the ministerial bureaucracy, it will be an advantage to the inexperienced Diet membership

(9) *Open Hearings* The Diet Law permits popular participation in the law-making process by empowering committees to "conduct open hearings on important questions of popular concern or public interest in order to hear the views of interested parties and persons of learning and experience " In adopting this old and successful legislative practice from the United States, the only nation which uses it extensively, the House of Representatives special committee on the Diet Law Bill accepted it only after winning over an obstinate minority It may come as a surprise to nationals of other countries to learn that among some lower House members there exists a peculiar attitude toward the duties and obligations of elected representatives One member of the committee unblushingly stated that Article 51 of the Diet Law requiring public hearings "in a way may seem

to be a progressive rule, but the basic ideology of the public hearing is an insult to every member of the committee. It can be said to be a self-denial. Of course, we members of the committee cannot deny that we are the representatives of the people, but I am absolutely against having experienced scholars or interested persons attend our meetings. Especially when the subject concerns bills for budgets or incomes, I am against opening the meetings to the public. It is fine for us to have party members attend and give us their opinions on certain subjects, but I am opposed to having a public hearing on important budgets and incomes. If the opinions of the public and the committee should be completely different, of course, the final decision would be made by the committee, but if this news should at once be published, the people would think that we were not cooperating with them. In such a case, committee members would be . . . bound by the attitude of the general public." Another member of the committee agreed that while "it is only natural for each Diet member to try to gain all kinds of knowledge in every possible way . . . there is a great difference between a Diet member acting on his own and the entire House of Representatives setting up a public hearing system. I think that this is very radical in the sense that the general public is able to participate in legislation." Though the majority of the House committee was able to erase the doubts of the minority concerning the public hearing system, opinions expressed by the opposition are presented here because this subject "was the most discussed provision" during the examination of the Diet Law Bill by the special committee. The opposing members were brought around upon being convinced that a public hearing would always be planned and conducted in a systematic and orderly fashion under the complete control of a Diet committee.

(10) *Examinations and Investigations.* While a few members doubted the wisdom of permitting the general public and "men of learning and experience" to express their views at committee hearings, none objected to the article authorizing each House to "dispatch its members for purposes of examination and investigation." Even if this new privilege should be abused at the outset, committees will eventually find it a most effective aid in formulating and supervising state policy. With the power of investigation and the new power to "summon witnesses to testify in connection with legislative matters and the investigation of national affairs," members of standing committees in the course of time should become no less expert in their respective fields than government officials.

(11) *Legislative Committee of the Houses.* The Diet Law sets up an unique agency called the Legislative Committee of the Houses, composed of 10 Representatives and 8 Councillors, whose function is to "make recommendations to the Houses and the Cabinet concerning the introduction of new legislation, existing laws, and Cabinet Orders; it shall also investigate and study the Diet Law and other regulations of the Houses and make recommendations to the Houses for their revision." With reference to interim sittings and permanency of membership, the regulations governing standing committees apply equally to the Legislative Committee of the Houses. Similar in some respects to legislative councils successfully employed by two or three state governments in the United States, this committee is probably the only one of its kind in the world serving a national government. Should friction arise between the unusually powerful House of Representatives and the newly established House of Councillors, or between the Diet as the highest organ of state power and the Cabinet elected by and responsible to the Diet, the Legislative Committee of the Houses, the only permanent joint committee in the Diet and the only committee capable of rising above the turmoil of party politics and factionalism, may advance an acceptable solution before any damage is done. That the committee has advisory powers

only will give its decisions more weight than if it had compulsory powers, inasmuch as its reliance solely upon persuasive influence is not likely to engender Diet and Cabinet antagonism based on jealousy. Because a committee of this nature has not been tried elsewhere on a national scale, it will be interesting to observe its development from session to session for evidence of originality and sound judgment which may contribute to the successful operation of the Japanese government under the new Constitution

IV. The Process of Legislation

A great volume of legislation was enacted by the Japanese Diet during the first 2½ years of the Occupation, as the following table shows:

Session	Date	Number of laws passed
Ninetieth (Imperial Diet)	June 20, 1946 to Oct 12, 1946	97
Ninety-first (Imperial Diet)	Nov. 26, 1946 to Dec 26, 1946	21
Ninety-second (Imperial Diet)	Dec 27, 1946 to Mar 31, 1947	95
First (National Diet)	May 20, 1947 to Dec 9, 1947	174
Second (National Diet)	Dec 10, 1947 to June 20, 1948	230

Since most of these laws were required, inspired or influenced by Occupation objectives and policies or otherwise bore some relation to them, they were all, at one stage or another, examined by General Headquarters The degree of SCAP influence on and interest in Japanese legislation varied, of course, with the subject matter It also changed as the Occupation progressed, for as the legislative enactments necessitated by the requirements of Allied policies in Japan were effectuated, the sector in which the Japanese were free to legislate without SCAP influence or restraint occupied a larger and larger part of the legislative field.

1. Preparation of Legislation

It has already been noted that early in the Occupation the Japanese Government was handed a series of directives in the form of memoranda of the Supreme Commander which required that certain actions be accomplished. Implementation of these directives often involved the repeal or amendment of existing laws or the enactment of new ones Some of these laws were promulgated as Imperial Ordinances and later ratified by the Diet, some were drafted by the Cabinet as Government bills to be enacted as Diet laws in the first instance Some of the laws, enacted purusant to SCAP directives, were essentially a repetition of the SCAP instructions More often, however, the SCAP directive merely stated the objective to be achieved and the principles to be observed in its achievement, leaving to the Japanese Government the task of preparing suitable plans and drafting the necessary legislation Usually the directive authorized direct communication between the responsible ministries or other agencies of the Japanese Government and the various staff sections of GHQ for consultation and advice on methods and details of implementation In any event, since direct communication on technical matters was authorized from the beginning of the Occupation, the practice was for the Japanese, upon receiving a directive, to make contact with the appropriate GHQ staff section for consultation and advice on plans and legislation necessary to implement the directive. It took weeks and sometimes months to achieve a satisfactory draft. The basic work on the substance of a bill would be performed by the responsible ministry or other agency of the Japanese Government. Thence it would go to the Cabinet Bureau of Legislation where it would be examined and edited for constitutionality, consistency with

existing legislation, and form and phraseology before being submitted to the Diet. In passing it may be noted that, although the Cabinet Bureau of Legislation was ostensibly legal advisor to and legislative draftsman for the Cabinet, it had, by years of bureaucratic practice and precedent, arrogated to itself the power to alter not merely the form and language but also the substance of draft bills received from the various ministries to make them conform to its own ideas of governmental policy. In February 1948, when the office of the Attorney General of Japan was established, the Cabinet Bureau of Legislation was abolished, and the duty of rendering legal advice and drafting assistance to the various executive agencies of the Government, on their request, was assumed by a section in the office of the Attorney General.[10]

In addition to the legislation called for by the formal memoranda of the Supreme Commander, a number of laws in furtherance of Allied policies were prepared and enacted by the Japanese Government as a result of informal discussions between officers of the various Japanese governmental agencies and their respective opposite numbers in General Headquarters. The influence exerted in this manner varied. At times the Japanese, recognizing the desirability of some suggested action, would respond readily. At other times a considerable amount of discussion and persuasion was required to induce them to institute some desirable change. Occasionally the Japanese would come forward with a proposal of their own for furthering Allied policies and GHQ consent was readily given. Finally, a number of laws were proposed by the Japanese which were intended to meet problems and needs that were purely domestic. As to these the established policy of the Supreme Commander was to permit the Japanese to administer their internal affairs free of interference or intervention by the Occupation authorities, provided that Occupation policies and objectives were not violated or jeopardized. Regardless of the nature of the problem, however, the advice, assistance and cooperation of the responsible staff section of General Headquarters on both matters of policy and technical details were constantly available to and frequently used by all branches of the Japanese Government.

2. Coordination with SCAP Staff Sections

In General Headquarters, each staff section supervised Japanese implementation of Occupation directives and policies in the fields for which that section was responsible. This included, of course, instruction, suggestion, and advice on proposed legislation in those fields. The staff section having primary interest in the subject matter of a proposed law effected necessary coordination with other sections having an interest in the subject, carried on the main discussions with the Japanese officials concerned, and indicated to them when the draft was considered satisfactory from SCAP's point of view. Once approved or cleared by the responsible staff section of General Headquarters, the bill was ready for final processing and approval by the Cabinet before introduction in the Diet.

When a bill was ready for introduction in the Diet, copies would be delivered to Government Section under its working arrangements with the Diet. Unless the proposed law dealt with matters falling within the scope of Government Section's staff responsibility (in which case the Section would have participated, either as principal or as other interested staff section, in the discussion and coordination leading up to the final draft), this would be Government Section's first contact with the proposed law. Assuming that (1) the bill had previously been discussed with and passed by the section having primary interest, (2) coordination within GHQ had been fully achieved, and (3) no material changes had been made subsequently by the Japanese, the bill, as sub-

[10]Appendix H: 29, Law Establishing the Attorney General's Office, Law No. 193, December 17, 1947.

mitted to Government Section, would be cleared by Government Section for introduction in the Diet, after referring the bill to the interested staff sections of GHQ and receiving word from them that it was satisfactory or that there were no objections. About 800 bills were so processed. Amendments introduced in Diet committees or at plenary sessions were treated in the same manner as the original bills As a rule, the laws as finally enacted constituted a composite of the views of General Headquarters, the Cabinet and the Diet

3. Diet's Independence Encouraged by SCAP

One of the Government Section's principal concerns was to groom the Diet to assume and exercise fully the powers and functions assigned to it by the new Constitution. This involved building up the dignity and prestige of the Diet—in the estimation of its members as well as of outsiders—that they might better discharge their responsibility to the electorate It also involved protecting the Diet against bureaucratic pressures to which it had yielded so readily in the past and which it was as yet not equipped to resist unaided. Early in 1946, even before the Constitution became effective but after the first general elections under the Occupation, it was made clear to the Japanese Government bureaucrats that they could expect no help from GHQ in any attempt to continue to use the Diet as a rubber stamp, that the Diet would be expected and encouraged to consider and discuss fully every measure that was put before it by the Government, and to register its decisions for the information of the people and for the Cabinet to heed. So long as it did not enact laws or adopt resolutions which jeopardized some objective or policy of the Occupation, the Diet was to be permitted the fullest freedom in the exercise of its functions.

a. *MacArthur Urges Freedom of Debate* In June 1946, just before the ninetieth session of the Diet, a high official of the Japanese Government informally approached General Headquarters with the suggestion that, in view of the urgent issues to come before the Diet and of that body's known tendency to expend valuable time in dilatory debate for purely political effect, it might be beneficial if the Supreme Commander were to address a statement to the Diet urging it to limit political discussion and to act expeditiously on the measures to be submitted to it by the Government The draft of the new Constitution of Japan had been published in March, had been widely discussed before and after the general elections of April 1946, and was to be the first important government proposal to the new Diet On June 21, 1946, General MacArthur, in a public statement on the submission of the draft constitution to the Japanese Diet, called upon the Diet to "assure to all members a free, fair and untrammelled right of discussion and debate" and "to give thoughtful consideration to every suggestion offered by its membership, regardless of strength or party affiliation "[11] This was not the sort of statement the Japanese bureaucrats had hoped for. It was, however, in keeping with the Supreme Commander's ideas of the role of the legislature in a representative government.

In line with this policy, both the Cabinet and the Diet were informed by Government Section at every opportunity that the legislative process would not be subverted by ordering the Diet to pursue any given course of action In connection with bills of purely internal import, whether government-sponsored or member bills, there was to be no interference whatsoever with the Diet's free exercise of its functions. If any Government bill for implementing some objective or policy desired by SCAP was turned down by the Diet, the remedy lay not in prostituting the Diet by making it pass legislation under covert SCAP pressure, but to issue a "Potsdam Ordinance," pursuant to a SCAP directive, i.e., an order issued by the

[11] Appendix C 13, General MacArthur's statement on submission of draft constitution to the Diet.

executive branch under the Government's obligation to carry out the Potsdam Declaration as agreed in the instrument of surrender. If the Diet were to pass a bill which violated or jeopardized some Occupation policy or objective, such act could be set aside by SCAP order. Actually it was never necessary to exercise this power. Once, when the Government Section directed the Diet's attention to the impropriety of a resolution by Yukio Ozaki calling for the return of certain of Japan's former outlying island possessions, the House of Representatives itself withdrew the resolution.

On the whole, the supervision of the flow of legislation in the Diet under these policies functioned smoothly. So far as Japanese Government officials and Diet members were concerned, the basic principles were well understood and established at an early stage. Some breaches did occur, however, on the SCAP side. On a few occasions SCAP officials, in their zeal to secure the passage of some desired measure or the defeat of one which they considered objectionable, undertook to issue direct instructions to Diet committees. These breaches were emphatically corrected as quickly as discovered, but in order to protect the Diet against recurrences of pressures of this sort a staff memorandum[12] was circulated to all sections of General Headquarters on March 20, 1947, instructing them that Government Section would advise the House of Representatives and the House of Councillors on bills proposed by or to the Diet, and that all proposed legislation would be coordinated with Government Section. This formally made the Government Section GHQ's clearing agent for all legislative proposals desired or sponsored by other staff sections, as well as those initiated by the Japanese.

b. *Use of Executive Orders Curtailed.* Soon after the Constitution became effective, it was observed that both the Cabinet and the Diet were failing to draw the proper distinction between legislative enactments and Cabinet Orders, often using the latter to effect what amounted to substantive legislation. This was an understandable hang-over of old habits formed under the Meiji Constitution, when the government legislated by Imperial Ordinances. In some instances such Cabinet Orders had the approval of SCAP officials, themselves following habits formed in the early days of the Occupation when SCAP instructions were implemented by corresponding Imperial Ordinances promulgated by the Cabinet without reference to the Diet. To correct this abuse before it became ingrained, the Government Section in July 1947 arranged with the Government to have all Cabinet Orders, except those of a purely routine administrative nature, submitted for clearance before they were promulgated. Three months later, for the information and guidance of SCAP officials who might be inclined, for reasons of expediency, to request or approve Cabinet Orders where the subject was one calling for Diet action, a staff memorandum was circulated to all staff sections of General Headquarters requiring them to coordinate with Government Section all proposed Cabinet Orders in which they were interested.[13]

c. *Diet Encouraged to Initiate Bills.* During the first year of operation under the new Constitution approximately 500 Cabinet Orders were issued, of which 200 were examined by the Government Section. The proportion of rejections was sufficient to make abundantly clear to both the Cabinet and the Diet where the proper line of demarcation lay between executive powers exerciseable by means of Cabinet Orders and the legislative prerogatives of the Diet.

By far the greatest number of laws enacted during these 2½ years, especially in the early part thereof, consisted of Government bills. This was only natural in view of past practice and because the initial directives, orders and suggestions of General Headquarters for fur-

[12]Appendix G: 8a (5), Staff Responsibility for Japanese Legislation, Staff Memorandum No. 29, March 20, 1947.

[13]Appendix G: 8a (7), Curtailment of Scope of Japanese Cabinet Orders, Staff Memorandum No. 81, October 1, 1947.

thering Occupation objectives were addressed to the executive branch of the Government. The Diet did, however, make many amendments in the laws proposed to it by the Cabinet. As time went on, and especially after the committee system in the new National Diet was instituted, member bills became more numerous.

Only 50 bills drafted by the Diet members were cleared by General Headquarters before introduction in the Diet Of these, 28 were enacted into law Since the Diet had never had a professional bill-drafting service, the preparation of legislation having been almost exclusively the prerogative of the ministerial bureaucrats, many of the member bills were found to be poorly drafted. Nevertheless, in keeping with established policy, Government Section consistently encouraged the drafting of member bills on the initiative of individual members or committees. In February 1948 the National Diet Library Law was enacted providing, among other things, for a legislative reference service similar to that maintained by the United States Library of Congress In April 1948 an amendment to the Diet Law provided for a strong bill-drafting department in each House of the Diet As a consequence of these developments it is expected that a greater proportion of Japanese legislation in the future will be initiated by Diet committees and individual members, with the executive drafting a smaller proportion of the total This trend should contribute materially to the growth of power and prestige of the new National Diet

V. *Establishing Representative Government*

The new Constitution became effective on May 3, 1947, and with it the new Diet Law and the House of Councillors law The first session of the new National Diet lasted from May 29 to December 9, 1947, the second, from December 10, 1947 to May 7, 1948 The basic constitutional and statutory framework for a democratic and responsible legislature had been created The membership had been thoroughly reconstituted as the result of the general elections of 1946 and 1947 This was no lame duck affair but Japan's first attempt at truly representative government If the Diet did not immediately measure up to its position as highest organ of state power, it at least worked with enthusiasm and made a promising start, despite its background of legislative impotency under the Meiji Constitution, the opposition of the still dominant bureaucracy, the inexperience of party leaders in the Cabinet and of many members in the Diet, the depressing economic plight of the country, and the presence of Allied troops.

The first two sessions of the National Diet might be called a period of growing pains, during which Government Section's role, aside from the observation and supervision of legislation affecting the Occupation, was that of adviser Members of the Section, in daily conferences with the presiding officers of both Houses, the Secretaries General, committee chairmen and rank and file members advised them in the use of the Diet's new powers, legislative machinery, aids and devices; analyzed their parliamentary errors and deficiencies as revealed by actual operations and suggested remedies therefore in corrective procedures and practices; advised on interpretations of the Diet law, and guided them in their relations with the executive branch of the Government

1. Election of Diet Officers

The first item of business in each House in the first National Diet was the election of the

cials, formerly a matter of little consequence, since the Emperor personally appointed highest ranking nobles as President and Vice President of the Peers and nominated as Speaker and Vice Speaker one of three candidates selected by the Representatives. However, the new elective House of Councillors, successor to the House of Peers, selected as President a man "above" party politics—a distinguished Foreign Office official and descendant of the first Tokugawa; as Vice President, it chose a left-wing Social Democrat, champion of Japan's untouchables, the Eta class. The House of Representatives chose as speaker a veteran labor leader, and as vice speaker a political wheelhorse of the Democrat Party. Except for the latter, who was replaced during the second National Diet session because he bolted the party, these House officials were inexperienced parliamentarians.

2. Selection of the Prime Minister

Instead of being appointed by the Emperor upon the recommendation of various imperial agencies, the first Prime Minister under the new Constitution was designated by the Diet. Actually Tetsu Katayama, Social Democrat, was selected by leaders of the coalition parties, who started conferences on the subject a week before Diet convocation and reached a final decision 2 days after the Houses had elected their presiding officers. Article 67 of the Constitution stipulates that designation of the Prime Minister by the Diet "shall precede all other business."[14] Had the embarrassing delay in agreeing on a Prime Minister been prolonged two or three more days, the Houses would probably have resolved the issue by voting in plenary session on nominees designated by each party, balloting until one candidate received a clear majority. The House of Councillors prodded the party leaders into action by announcing its intention to proceed with the designation of its choice if the parties could not reach an agreement by midnight on May 23. Before this deadline, the parties agreed upon the submission of a single candidate for Prime Minister, Tetsu Katayama, to the Houses for designation.

Almost 9 months later, upon the resignation of the Katayama Cabinet, there was no party agreement upon a Prime Minister designate. In the House of Representatives, Hitoshi Ashida, Democrat, was designated Prime Minister on the first ballot with 216 of the 421 votes cast, as against 180 for Shigeru Yoshida, Liberal. In the House of Councillors, however, Yoshida received a plurality on the first ballot, 101 of the 218 votes cast, with Ashida receiving 99. On the second ballot, Yoshida received 104 and Ashida 102 of the 216 votes cast, with 10 declared invalid. By a vote of 113 to 105, the Councillors decided that Yoshida had not received a majority of the votes cast and had, therefore, not been designated Prime Minister. Later that evening, the House of Councillors reversed itself and voted by acclamation for Yoshida. In accordance with article 67 of the Constitution, a joint committee of the Houses met to break the deadlock, but upon its failure to agree, Ashida became the Prime Minister under article 67 of the Constitution. Thus, on the second occasion for designating a chief executive, the Diet exercised its constitutional right to elect the Prime Minister rather than accept a single candidate picked by political leaders.

In the organization of the Houses in the first two sessions, it was decided that the distribution of committee chairmen and memberships should correspond to the division of posts in the coalition Cabinet. Despite some discussion as to whether committee chairmen should be divided equally among all parties, the House of Representatives decided to pick them exclusively from the Government parties and to apportion committee membership on the basis of the strength of each party in the House, a scheme which gave Government parties a majority on all committees.

[14]Appendix C: 21.

3. Diet-Cabinet Relations

The first important Diet-Cabinet conflict arose early in the first session over the appointment of parliamentary vice ministers and councillors Article 10 of the House of Representatives election law stipulated that Diet members might be appointed to a number of administrative positions, including those of parliamentary vice minister and parliamentary councillor. Article 39 of the Diet Law, however, an expression of the true intent of the Diet in 1947, provides that members are not to be appointed to administrative positions except by law or by consent of the Diet When the Katayama Cabinet began appointing Diet members to executive positions, each House protested, claiming violation of the law Their real opposition was to the fact that arbitrary raids on Diet membership by the Cabinet constituted an affront to the dignity and position of the Houses under the new Constitution Neither side won a clear-cut victory In return for the privilege of appointing 11 parliamentary vice ministers, the Cabinet gave up its right under Article 10 of the Election Law for Members of the House of Representatives to appoint parliamentary councillors, and, in addition, agreed to reexamine the question at the close of the session in May 1948 During the course of this dispute, Japanese newspapers generally denounced selection of Diet members for Government positions as unnecessary, vicious, corrupting, and at variance with the new system of standing committees in each House Meantime, the new Prime Minister, Hitoshi Ashida, reopened the question by asking for more than 11 parliamentary vice ministers from the House of Representatives, positions which he needed for bargaining purposes The House of Representatives and the House of Councillors countered by offering to allow 11 parliamentary vice ministers from each House for the duration of the second session, provided the Cabinet-sponsored bill contain a clause repealing Article 10 of the Election Law for Members of the House of Representatives, which would eliminate the system entirely. The Cabinet agreed to this and incorporated it in the bill for temporary appointment of parliamentary vice ministers, which was approved by the Representatives on April 5 and by the House of Councillors on April 7, 1948.

Numerous factors contributed to ministerial delays in submitting bills to the Diet, thereby causing the original 50-day session of the first National Diet to be extended four times On the occasion of the first extension, Chief Cabinet Secretary Suehiro Nishio announced publicly that he would request the Diet to extend the session 3 weeks. Thereupon, the presiding officers of the two Houses released the following statement: "In contrast with former procedure, the term of a special Diet session, under the new Constitution, is decided by the National Diet itself, and not by the government . . The National Diet receives no directions in this connection . This announcement is made in order to make clear to the nation the position of the National Diet " The Cabinet promptly yielded

4. Expansion of Diet Staff and Facilities

Unlike its predecessor, which was literally confined to the four walls of the Diet Building, the new Diet, with its expanded functions, anticipated that it could not operate properly with its limited secretarial staff and inadequate office space and drew up plans and requested appropriation for buildings for members, committee hearings, printing offices, the National Diet Library, members' quarters, pressmen, stenographic training schools, and a reception hall In the past, the Budget Bureau of the Finance Ministry on its own authority could and would have curtly denied such a request from the Diet even if it had been made, which is unlikely. But in the spring of 1947, 2 months short of the effective date of the new Constitution, Diet officials, conscious of their future status, approached the Economic Stabilization

Board and the Cabinet Construction Board for materials and blueprints and then persuaded the Finance Ministry to set aside, over a 3-year period, approximately 270,000,000 yen for the House of Representatives and 125,000,000 yen for the House of Councillors to cover the cost of 16 structures. While the Houses were busy throughout June and July electing their officers and a Prime Minister, organizing committees, differing with the Cabinet over parliamentary vice ministers and the extension of the Diet session, and awaiting the submission of Cabinet bills to the Diet, the Cabinet Construction Board was clearing building sites and letting contracts for the construction of eight Diet buildings during the fiscal year of 1947–48. Although two partially completed structures were destroyed by fire in February 1948, two others were completed in May, with the remaining four to be ready later.

During the first Session of the National Diet, the secretariat staffs were increased from 371 to 597 employees in the House of Representatives and from 164 to 420 in the House of Councillors; in addition, a clerk was employed for each of the 466 Representatives and 250 Councillors. Moreover, the Diet in April 1948 requested sufficient budgetary appropriations to recruit 604 people for the staff of the new Diet Library, including the legislative bill-drafting and reference service.

5. Diet Exercises Newly-Won Powers

Reveling in its new powers, the Diet delighted in asserting its authority as shown by the following incidents:

Standing committee chairmen, desirous of recognition commensurate with their position as House officials, concluded that they no less than the bureaucrats, deserved automobile transportation furnished by the Government. Acting in concert, they demanded that each Ministry release one sedan to them and that the Transportation Ministry supply additional vehicles purchased from the Occupation Forces as United States surplus war supplies. Their request was granted.

A technique for dealing with Government officials was demonstrated early in the first session by the Diet Library Committees. The Diet had informed the Closed Institutions Liquidation Commission, custodian for the South Manchurian Railway Library, that it wanted for the Diet this book collection, for which the Finance Ministry was also quietly negotiating. Upon learning that the Finance Ministry had all but closed a deal for the books, the library standing committees threw their full weight into the controversy, even threatening a joint resolution of the Houses. Summoned before a joint meeting of the library committees, a Finance Ministry official admitted under questioning that the Ministry had not intended to consult the Diet on the matter, not considering that Diet interests took precedence over those of the Finance Ministry, and that it had, by ignoring the Diet, committed an error. The chairman of the House of Councillors Library Committee called the Ministry's action "a continuation of the malicious and premeditated bureaucratic practice of disregarding the legislature." Acknowledging the priority of the Diet, the Finance Ministry withdrew its 5,000,000-yen bid for the book collection and the Diet secured it free of charge.

In years past, the Government reserved a number of rooms in the Diet Building for Government delegates and parliamentary vice ministers. Under pressure from committee chairmen for additional space, the House of Councillors instructed the Cabinet to vacate the Diet Building by the end of the first session. The Cabinet moved.

A number of clashes occurred between Diet committees and Government officials. Typical was one in October 1947 when the chairman of the House of Councillors Communications Committee, rebuking the parliamentary Vice Minister of Communications for superficial replies to questions and for "standing on ceremony," said, "We urge the Ministry to speak

more frankly and to inform this committee in detail on all major problems at hand " The parliamentary Vice Minister replied, "Needless to say, it is not our intention to keep any matters secret. If some awkwardness has been apparent to date, it is attributable to our inexperience with the new Diet procedures " Under similar circumstances in the House of Representatives a few days later, the chairman of the Special Committee for Investigation of Concealed and Hoarded Goods deplored the uncooperativeness of Justice Ministry officials, saying that Government delegates on one pretext or another would not appear before his committee when requested, and unjustifiably withheld documents The Justice Minister declared, "The Government will do its utmost to cooperate with the committee, and Cabinet Ministers will attend its sessions as often as possible. Delay in submitting documents has been due to the scope of the subject as well as to confusion at the time of the surrender "

The importance of a Japanese Government official can be measured largely by the elegance of the official residence furnished him by the Government For example, the Foreign Minister has the use of a far more luxurious residence than, say, the Minister of Agriculture and Forestry. In keeping with this practice, the presiding officers of both Houses determined at an early date to obtain for their official residences the most ostentatious estates remaining after the bombings of Tokyo. The Speaker of the House of Representatives took over without opposition the home of a prince of the blood, but the President of the House of Councillors bidding for the palatial estate of the Korean Prince Ri, found that the Chief Justice of the Supreme Court and the Minister of Justice wanted the same place Previously, no Diet official would have had the temerity to contest with a high Government official, but in this case the Councillors' president let it be known that he would take the place by virtue of his own high office—and he did.

a *Scope of Cabinet Orders Restricted* Under the Meiji Constitution, approximately three-fourths of all laws were enacted by Imperial Ordinances, of which emergency ordinances only required subsequent Diet approval. Although the new Constitution stipulates that Cabinet Orders may be issued only for the purpose of executing the provisions of the Constitution and of laws enacted by the Diet, bureaucratic officials continued to write substantive laws as of old It will be recalled that Government Section, under the staff memorandum dated October 1, 1947, was charged with responsibility for screening proposed Cabinet orders as a means of restricting their scope to administrative matters [15] About midway in the first session, the House of Councillors for the first time undertook to instruct the Cabinet as to how far it could go in the use of Cabinet Orders The Labor Ministry Bill, as passed by the House of Representatives, contained a clause permitting the Labor Ministry to increase bureaus by Cabinet Order, the Councillors amended this clause by substituting "Diet consent" for "Cabinet Order," meaning that the Labor Ministry could expand its functions only after submitting the plans for expansion to both Houses of the Diet While they took no exception to the substance of the Councillors' amendment, the Representatives resented the fact that the new second chamber would presume to tinker with a bill as approved by the powerful first chamber, and would have re-enacted the original bill had they been able to muster the necessary two-thirds vote. This being impossible, the House of Representatives acquiesced in the amendment of the House of Councillors and thus established the principle that the Cabinet must consult the Diet on matters of substance. When the Diet in February 1948 refused to allow the revenues which the Cabinet proposed raising by increased railway and communications charges to be used to pay the eight percent salary increases to which the Government was committed, it precipitated a

[15]Appendix G 8a (7)

crisis which led to the resignation of the Cabinet. The Cabinet at times during the two sessions, was irritated by what it considered unnecessary delay in procuring Diet approval of certain classes of Cabinet Orders, but it did not contest the Diet's interpretation of the Constitution.

b. *Diet Action on Budget Problems.* It is reasonably certain that henceforth the Diet will play a larger part in budget making, from the initial stages of compilation by the Finance Ministry to final passage by the Diet itself. Unable in the past to initiate, increase, or decrease the budget, the Diet had only the right to pass it. Under the new Constitution, "The Cabinet shall prepare and submit to the Diet for its consideration and decision a budget for each fiscal year," but, "The power to administer national finances shall be exercised as the Diet shall determine." During most of the first Session, members wondered whether the Diet could really increase the Cabinet's budget and whether it could add and delete items. Finance Ministry officials answered both inquiries in the negative and thereby left the finance and budget committees in doubt as to their power to administer national finances. But in the closing days of the session, the budget committee of the House of Representatives suggested the Diet's future course of action when it made the following declaration: "Supplementary budgets for the 1947 fiscal year were decided chiefly in consultations between GHQ and the Finance Ministry, while the budget committee started deliberations only after the Government formally submitted the budget to the Diet. In the future, especially in formulating budget estimates for the next fiscal year, the budget committee shall ask GHQ to consider the views of the committee while the budgets are being compiled. Above all, the committee hopes that, before reaching a decision with the government, GHQ will establish a channel of communications with the committee." In the future the Finance Ministry, in compiling budgets, can ill afford to ignore the Diet.

c. *Use of Resolutions by New Diet.* Nothing better illustrates the development of the Diet's understanding of its position under the new Constitution during the first and second sessions than its experience with resolutions. Ignorant of the use of resolutions by other legislatures, the Diet continued to pass representations, usually expressing nothing but pious wishes, beseeching the Government to follow a certain course of action. Early in the first session, the House of Representatives, for example, approved a "resolution" to stabilize the currency by increasing savings, which concluded with this declaration: ". . . it is hereby resolved that we now unite, forgetting party differences, and pledge ourselves to make all efforts for the achievement of the object of the savings movement." During the latter part of the first session and throughout the second, the number of resolutions proposed declined sharply, demonstrating a greater appreciation of their use, but those approved contained specific instructions and definite demands for Government compliance. For example, the House of Councillors, alarmed over the increase in crime, requested the Government to "take action to insure prompt and equitable disposal of cases, by increasing the fixed number of judges, public procurators and jail officials, and by improving their treatment sufficiently to assure them a satisfactory standard of living... The Government is to report to the coming ordinary Diet session on the results of the requested measures." The Justice Minister promised to comply, knowing that failure to do so would invite a resolution of censure during the next session. Both Houses made headway in the transition from representations to meaningful resolutions.

d. *Creation of a Diet Library.* That the members of the Diet are genuinely desirous of elevating the national legislature to the position of the highest organ of government is exemplified in their determined efforts to establish a functional Diet Library and with it a national library system equal to the best. From the very

beginning of the first session, in an effort to implement both article 130 of the Diet Law, which provides that ". . a Diet Library shall be attached to the Diet in order to help members conduct their investigations and researches," and the Diet Library Law enacted March 28, 1947, the Diet standing committees on library management, acting jointly, surveyed library conditions throughout Japan, established and maintained contact with British and American librarians and library systems, and outlined a broad plan for a national library system In July 1947, having progressed as far as possible without technical expert assistance, Diet leaders appealed to General MacArthur for the aid of an American Library Commission Their appeal was granted, and in December, Verner W Clapp, Assistant Chief Librarian of the Library of Congress, and Charles H Brown, Chairman of the American Library Association, arrived in Japan to work with the Diet committee, in coordination with Government Section and Civil Information and Education Section The National Diet Library Law which the committees drafted on the basis of recommendations of the American Library Commission, adopted unanimously by the Diet on February 4, 1948, envisages the establishment of an institution comparable in size and scope to the United States Library of Congress, the French Bibliothequc Nationale, or the English National Library in the British Museum Of inestimable value to the Diet will be the legislative reference service, which will free legislators from their former dependence on the Executive Branch of Government for information desired Under the guidance of Tokujiro Kanamori, chief librarian, organizational plans for the library were completed, a staff recruited, and arrangements made for temporary quarters for the library in the Akasaka Detached Palace, pending construction of a permanent library building as provided for in the National Diet Library Construction Law, enacted on February 4, 1948 The formal opening of the National Diet Library was held on June 5, 1948.

6 Conduct of Diet Business

In the course of deliberations on some 250 legislative bills and 30 budgets in the first and second sessions, the Diet, in committees and in plenary sessions, had ample opportunity to test the new legislative machinery provided in the Diet Law

a *Introduction of Bills* The new method of introducing bills by simply handing them to the speaker, who, in turn, referred them to appropriate committees, proved to be satisfactory Because this plan eliminated the former procedure whereby each bill was introduced and explained to plenary session, followed by interpellations, the number of plenary sessions was reduced, causing some members to feel that there was a dearth of Diet business But when they discovered that an important bill, such as the State Control of Coal Mining Bill, could, at their request, be explained in plenary session at the time of its introduction, they ceased complaining

b *Conduct of Discussions* The practice of "free discussion," required at least once every 2 weeks, taxed both Houses beyond their capacity. Besides the fact that Japanese do not indulge in the Western type of argumentation and debate in their schools or public assemblies, there were two reasons for the difficulties encountered by the Houses in attempting conscientiously to indulge in free discussion In the first place, Japanese plenary sessions were always extremely formal affairs Intense debate and deliberation, however, were carried on within Diet committees and political parties prior to plenary session balloting And once a party decision was reached on a given issue there was no deviation from it by the party's parliamentary representatives. Thus, each step of a plenary session could be thoroughly planned beforehand, since no time allowance need be granted for extemporaneous speaking or any other procedures not agreed upon prior to the sitting Secondly, the steering committees of the Houses considered it unnecessary,

because of this intensive preliminary negotiation within and among political parties, to allow controversial issues to be placed on the agenda. The single exception was the hotly contested nationalization of coal mines issue, which was fiercely and successfully debated at a free discussion session.

c. *Daily Calendar and Procedural Matters.* Despite the creation of a management (steering) committee, each House held fast to the formal interparty conference, a body representing all political parties and groups, for fixing the daily calendar and settling all disputes arising in connection with the business of the House. Although the Diet Law clothes the presiding officers with considerable authority, they exercised it only with the advice and consent of the interparty conference, which met immediately prior to each plenary session. Since this practice reduced the presiding officers to figureheads and, at the same time, deprived the management committees of their rights, the Representatives and Councillors decided to eliminate the interparty conference. Accordingly, in April 1948 the Diet Law was amended to provide that the presiding officer may confer on procedural matters only with a subcommittee of the House Management Committee.

7. The Work of Diet Committees

Allowing for a generous amount of awkwardness, fumbling, and timidity, as well as the necessity for experimenting, the twenty-one standing committees in each House made an excellent showing and gave promise ultimately of establishing the Diet as the strongest of the three branches of government. As noted in previous paragraphs, these committees challenged, though not always successfully, the Ministers and the entrenched bureaucrats under them, and what they learned will be used to advantage in succeeding sessions. In taking issue with the executive branch over Cabinet Orders, the committees gave notice of their determination to be responsible for substantive law. By showing an increasing understanding of their power over taxation, appropriations, and administration, the finance, budget, and audit committees indicated that the people's representatives will henceforth exert a strong influence over these matters. If in all cases they did not prove to be experts in operating their new legislative machinery, they at least showed both willingness and ability to learn as they examined and deliberated scores of bills.

a. *The Use of Qualified Experts.* Although the fairly alert Japanese press continued to treat Diet members in general as self-seeking and ignorant adventurers, it never accused them of failing accurately to analyze bills. That members showed a certain uncanniness in hitting upon the salient features must be attributed in part to the two full-time "qualified specialists" attached to each standing committee. Some of these experts have distinguished records both at home and abroad in their respective fields of finance, foreign affairs, public health, transportation, commerce, communications, and the like. Studying the bills, they explained them to the committees, detected flaws, suggested amendments, pointed out encroachments on legislative authority, briefed committeemen who interpellated Government delegates, provided background information, and in general served as a match for the experts in the executive bureaus. A committee of qualified specialists, for example, alerted the House of Councillors Labor Committee to the provision in the Labor Ministry Bill allowing the creation of additional bureaus by Cabinet Order, thus initiating the controversy which ended the executive's attempted invasion of the legislative field. Numerous important amendments to Government bills were adopted by the Houses upon the recommendations of these special committee experts. Incidentally, to them belongs the credit for resolving, on an impartial basis, some of the serious disputes between political parties.

b. *Investigation and Research.* Prohibited for

57 years by the Law of the Houses from investigating conditions outside the Diet Building, the new standing committees, taking full advantage of their new privilege of making on-the-spot investigations (even abusing it at times), traveled to all parts of the four islands to investigate everything first-hand—coal mines, factories, power sites, penal institutions, police systems, courts, cultural centers, shrines, schools, libraries, hospitals, repatriation camps, flood-damaged areas, and harbors.

A number of committees, with fewer bills referred to them for examination, quietly busied themselves with the study of matters within their respective fields, gaining information, background, and experience for drafting legislation of their own and for preparing themselves to evaluate government proposals While the Electricity Standing Committee of the House of Councillors examined not a single bill, it took testimony from producers and consumers of electricity, electrical workers, and electrical engineers As a consequence, toward the end of the session, when the first cold spell brought on a power crisis, this committee won House approval for a resolution on the subject which did more to focus public attention on the nature of the trouble and a sensible solution than did any action on the part of an executive agency The library committees of the Houses prepared themselves so well that when the United States Library Commission arrived in December, it went to work in less than 24 hours on the basis of the committees' findings, thereby saving months of background research. Other committees made similar studies

c. *Public Hearings* No new legislation practice was used more successfully or effectively by the committees than public hearings, an interesting development in view of the fact that there was more opposition to the provision for public hearings than to any other provision in the Diet law. Public hearings conducted on the criminal code, the civil code, the coal bill, the general budget, the habeas corpus act, the minor offense bill, and others were dignified, fair and informative, and attracted unusual attention. Committees invited leading experts and ordinary citizens of both sexes to present their views, a procedure which benefited the committeemen, attracted large crowds to the hearings, and produced wide coverage in the press, results which far more than adequately justified the effort Spectacular, circuslike antics were avoided, and the members made no effort to capitalize on the hearings to gain personal publicity

d *Special Committees* Under the Meiji Diet, all legislative bills, insofar as they were examined at all, were studied by special committees, whereas the Diet Law provides that practically all legislative bills will be deliberated by standing committees Nevertheless, during the first and second sessions, special committees were appointed to investigate flood damage, repatriation, certain political matters, hoarded goods and illegal property transactions The Hoarded Goods Special Committee for Investigation of Concealed and Hoarded Goods deserves special attention because it undertook to investigate a matter of dangerous political ramifications, under severe handicaps, and won sufficient public support to have its tenure extended At the beginning of the second session, its powers were greatly enlarged and its field extended to include illegal property transactions * The function of this committee was to locate and put to use billions of yen in commodities which had been dispersed and diverted wholesale at the end of the war, profits from which contributed to political corruption during the postwar period. During the first

*In January 1948, the former Special Committee for the Investigation of Concealed and Hoarded Goods, headed by Social Democratic Kanju Kato, was superseded by the Illegal Property Transactions Investigation Committee, which was specifically charged by the Diet with the comprehensive task of probing at illegal disposals of hoarded goods since the date of surrender as well as effecting investigations in irregular transactions involving political figures and parties Unjuro Muto, succeeded Kato as committee chairman when the latter became Labor Minister in the Ashida Cabinet in March, 1948

National Diet, the committee, opposed fiercely by persons in and out of office, suffered because of its inability to administer oaths to witnesses. On the last day of the first session, this limitation was removed by enactment of the Law for Oath, Testimony, Etc., of Witnesses at the Houses, a measure drafted by the Judicial Affairs Committee of the House of Representatives. Early in the second session, witnesses subpoenaed by the Illegal Property Transactions Investigation Committee and testifying under oath openly admitted to having given false testimony to public procurators when called before them. By February 1948, the committee had uncovered stolen and hoarded goods worth 5 billion yen and was responsible directly or indirectly for the arrest of a number of influential persons, constituting the largest investigation ever undertaken in Japan, reminiscent of the Teapot Dome scandal investigation in the United States following World War I.

8. The Position of the Upper House

A favorite pastime during the debates on the Constitution and later on the bill for the House of Councillors was to view with alarm the purposes, functions, and position of the second chamber.[14] As if conscious of every fear previously expressed about it, the House of Councillors, by carefully weighing every move it made, was able within the first 6 months of its existence to establish itself securely as a necessary and desirable part of the legislative branch. In selecting as its officials a Tokugawa and an Eta, in crossing swords with the more powerful House of Representatives, in denouncing boisterousness in the first chamber, and in avoiding rowdyism in its own, in its deliberations on the Coal Bill and in its every pronouncement and action, the Councillors impressed the public with their fitness to rise above partisanship and to sit in judgment on decisions which the House of Representatives sometimes rendered in haste and without sufficient regard for the general welfare. Thus far, control of the House of Councillors has been held by nonparty members, whose desire has been to avoid the factiousness and partisanship so evident in the House of Representatives. It is, however, inevitable that as the political parties become stronger they will win an increasing number of seats and eventually assume control in the House of Councillors.

POLITICAL PARTY STRENGTH IN THE DIET

Party	May 20, 1947	Dec. 11, 1947	Apr. 2[illegible], 1948
House of Representatives			
Social Democrat	144	140	123
Democrat	132	115	92
Liberal (Democratic-Liberal after Mar. 15, 1948)	129	111	150
People's Cooperative	31	32	30
Social Renovation (split from Social Democrat)		...	11
Doshi Club (merged with Democratic-Liberal)		22	...
Independent Club	15	25	10
Japan Farmers	8	8	7
Communist	4	4	4
Japan Liberal Club (split from Democratic-Liberal)		...	6
Nonaffiliated		5	4
House of Councillors			
Green Breeze	91	90	55
Democrat	42	44	45
Social Democrat	47	45	45
Liberal (Democratic-Liberal after Mar. 15, 1948)	44	43	44
Independent Club	19	14	14
Communist	4	4	4
Nonaffiliated	3	5	3

[14] Appendix H: 5, Law for the Election of Members of the House of Councillors, Law No. 11, February 24, 1947.

VI. The New Upper House of the Diet

1. The Upper House under the Meiji Constitution

Under the new Constitution of Japan the Diet consists of two Houses, the House of Representatives and the House of Councillors. To this extent the bicameral system which existed prior to the new Constitution was continued, but there the similarity ends.

The origin of the House of Peers, predecessor to the House of Councillors, was peculiar No provision was made for such a body by the Meiji Constitution or by statutory law It owed its existence solely to an Imperial Ordinance promulgated on the same day as the Meiji Constitution, February 11, 1889. This was prior to the convening of the first Diet in November 1890, but subsequent to the formation of the first Cabinet in 1885

Described by Prince Ito, author of the Meiji Constitution, as "an assembly of the higher grades of society," the House of Peers represented merely the ruling oligarchy in Japan Its membership consisted of the aristocracy, prominent citizens appointed by the Emperor and wealthy men co-opted from among the nation's highest taxpayers

a. *Nature of Membership* During its last 10 years of existence the House of Peers averaged 408 members The following table represents its composition in the Ninety-second Diet which dissolved on March 31, 1947, and was the last to meet under the Meiji Constitution.

Princes of the Blood	0
Princes	10
Marquises	23
Counts	18
Viscounts	66
Barons	65
Imperial nominees	128
Imperial Cabinet members	0
Highest taxpaying members	63
Total	373

Members from the Imperial Family were required to be only 18 years of age when they entered the House of Peers, princes, marquises and all others, 30, with the exception of those members elected by the highest taxpayers who were required to be 40 or over The average age of all members of the House of Peers during the Ninety-second Diet was 60

The highest taxpaying members were currently elected from and by the 100 or 200 persons in each prefecture, depending upon its size, who paid the highest direct national taxes on land, or on industrial or commercial property The term of office was for 7 years except for the members of the Imperial Family, princes, marquises, and emperor-nominated members, all of whom served as life members

b *Dominance of the Peers* Although under the Meiji Constitution the two Houses of the Japanese Diet, as in the Congress of the United States, ostensibly enjoyed equal legislative and budgetary powers, in practice the House of Peers not only occupied the superior position but also constituted a protecting influence for the aristocrats and bureaucrats whom it represented It was provided, for example, that whenever the Emperor appeared before the Diet the accompanying ceremonies would be held in the chamber of the House of Peers, with the president of that body specifically designated as the presiding officer on such occasions While most of the members of the Upper House were from the ranks of the nobility, members of the House of Representatives, on the other hand, possessed a court rank even lower than bureau chiefs in the executive branch of the Government.

The bulk of legislation under the Meiji Constitution was accomplished by one of the three forms of Imperial Ordinance. The Diet merely advised and assisted the Emperor in the legislative process It could not initiate policy, it could only apply temporary checks. Of the

comparatively small number of laws enacted by the Diet, nearly all were Government-sponsored measures drafted by the Cabinet Bureau of Legislation. Few bills were originated by the people's representatives in the Lower House, and popular member-sponsored legislation which passed the House of Representatives was too often rejected by the House of Peers. The latter, by nature an ally of the aristocratic executive power, was traditionally contemptuous of the Lower House and consistently hostile to political party projects. An outstanding example of this attitude has already been noted in connection with the unsuccessful attempts by the House of Representatives to liberalize the old Diet Law which provided for organization and procedures based on those of the Prussian Diet. The original Diet Law was promulgated in 1889 and was given the force of statutory law when adopted by the First Imperial Diet. Subsequent to its adoption, not less than six attempts were made to amend it. In the 1920's when representatives of political parties were customarily included in the coalition cabinets, there was a trend toward the establishment of parliamentary government. Three attempts were made by the Lower House to remove the shackles imposed upon its procedures and powers by the 1889 Diet Law, but on each occasion the reform bills initiated by the Lower House were rejected upon reaching the House of Peers.

2. Creation of the House of Councillors[17]

With the passage of the new Constitution of Japan, the Diet (Ikai) has now become the National Diet (Kokukai), the supreme organ of state power and the sole law-making organ of the state in a horizontal structure of government where the powers of the legislative, the judiciary and the executive are separate. Both houses are now elected and the former exalted position of the upper chamber has been modified. The new Constitution provides in place of the House of Peers, an elected House of Councillors, representative of all the people. It further provides for 6-year terms of office in the Upper House staggered every 3 years. The Constitution is silent, however, on the number of members, the composition of constituencies, the method of election, and the qualifications of members and electors, leaving these matters to be determined by statutory law in the interest of flexibility.

a. *Preliminary Research and Discussion.* The groundwork for legislation necessary to implement the Constitution and fill the gaps in that portion establishing the House of Councillors was laid during a series of conferences between the Japanese lawmakers and Government Section personnel, in the course of which the history and composition of many of the world's bicameral legislative systems were analyzed and the possibilities of adapting their best features to Japanese requirements were explored.

The Japanese Provisional Legislative Investigating Committee, a temporary body created to carry on the necessary research and to submit recommendations, considered well over a dozen systems of representation in, and election to, the Diet. These included: proportional representation; functional representation, i.e. occupation, interest, or class representation; combinations of proportional and functional representation; majority or plurality election from House of Representatives districts; indirect election by local authorities, such as by prefectural or city assemblies; and direct election from dual constituencies.

In the course of the discussions which continued through the summer and fall of 1946, a wide variety of opinions was expressed on all phases of the bill. Some difficulty was encountered in arriving at an acceptable and consistent interpretation of Article 43 of the Constitution which provided that: "Both Houses shall consist of elected members, representative of all the people." To some conferees the requirements of this article would be met if

[17]Appendix H: 5.

nomination of Upper House candidates were made by the Diet or by a commission appointed by the Prime Minister. Others thought that it would authorize indirect election in a manner similar to that by which United States Senators were selected prior to the seventeenth amendment to the United States Constitution Still others considered that limited occupational representation in the Upper House would be quite constitutional Strong arguments were presented that any form of representation in the Upper House other than on a strict functional basis would establish that body as a mere duplication of the Lower House Some of the Japanese conferees, reflecting distrust in the existing political parties, convinced that members of the Upper House should be above party politics, held that selection on a functional basis was the way to avoid party color in the make-up of the House of Councillors.

b. *Representation and Election* The various conferees, however, eventually arrived at the conclusion that both Houses should be directly elected by the people, that there should be no discrimination in the qualifications of electors for the two Houses, even though some differences in the qualifications of the members might be permissible, and that anyone with the appropriate qualifications should be eligible for candidacy These principles finally agreed upon were based on the premise that among the functions appropriate to the Upper House were those of initiating its own bills, examining and reviewing bills passed by the Lower House, interposing sufficient delay in the passage of bills to secure the expression of public opinion and conducting full and free discussion on all important questions, particularly those which might not receive full discussion in the Lower House if the fate of a Cabinet were involved

Once these principles were agreed upon, fairly rapid progress was made in determining the size of the body, the composition of constituencies, the minimum vote required to win a seat, the manner of supervising campaigns and elections, the balloting method, and other important details. Determination of the minimum acceptable age for candidates nearly proved to be a stumbling block, however, due to the traditional oriental respect for the elders Despite the suggestion of one conferee that it be placed at 60 and a more general opinion that 40 was a suitable age, the conference finally settled on 30. The draft eventually agreed upon was submitted to the Diet in November 1946 It first passed the House of Peers, the body which it eliminated, and on December 25, 1946, was adopted by the Lower House and became law

3. Membership of the Upper House

The size of the Upper House was purposely kept small in order to facilitate the maintenance of a high quality of membership The House of Councillors Law provides for a maximum of 250 seats, 150 of which are filled from the 46 prefectural constituencies, roughly on a population basis, with the remaining 100 members elected at large from a single nation-wide election district. Each elector votes for one national and one local candidate The dual constituency feature within the one chamber favors election of locally well-known men and encourages selection of well-qualified, nationally famous leaders from all fields of endeavor There is no guarantee that all the seats will be filled, as successful candidates from the prefectural and national constituencies must poll at least one-fourth and one-eighth respectively of the valid votes cast, divided by the number of seats authorized for their respective districts

a *Qualifications*. The qualifications for electors and candidates for both Houses of the National Diet are now substantially the same except that a candidate for the House of Councillors must be over 30 years of age, while a candidate for the Lower House need be only 25. The voting franchise for all public offices is now extended to any Japanese national over

20 years of age, save those who are "incompetent," "quasi incompetent," or in prison or sentenced to penal servitude.

b. *Method of Nomination.* Unlike in America, there is no system of primaries or nominating conventions in Japan. One becomes a candidate for either House of the National Diet simply by notifying the election chairman and filing a deposit of 5,000 yen. The deposit system discourages indiscriminate filing as the money is not returned unless the candidate polls 10 percent of the valid votes cast divided by the number of seats to be filled from the district.

4. The House of Councillors' Election Law[18]

A prominent feature of the House of Councillors Election Law, now found in all Japanese election laws, provides for the supervision of elections by administration committees chosen by the local assemblies. For the national Diet elections this function is exercised by a committee chosen by the Diet itself. These committees appoint election officials, supervise voting and counting, and rule on the validity of elections. This feature is particularly significant in view of the many irregularities which characterized Japanese elections in the past. It is a well-known fact that bribery in elections was the rule rather than the exception and that party leaders depended upon big business for the money necessary for a campaign. During that era in the 1920's and 1930's when political parties flourished, interference with elections through the party-controlled Ministry of Home Affairs was so common that the Government in power seldom lost an election.

5. Subordination of the Upper House

There are certain provisions of the new Constitution and implementing laws which place the House of Councillors in a definitely subordinate position. Formerly, the House of Peers could block a House of Representatives' bill with a majority vote; now the latter may, by a two-thirds majority of those present, pass a bill over the objections of the House of Councillors. Even though failure by the new Upper House to take action within 60 days on a bill passed by the House of Representatives constitutes a rejection, the measure may still be passed by the Lower House with a two-thirds majority. Under the Meiji Constitution both houses were equal in financial matters. Now if the House of Councillors fails within 30 days to pass the budget presented to it by the Lower House, the budget becomes law without consent of the Councillors.

Formerly the Prime Minister was appointed by the Emperor. He and his Cabinet were not responsible to the Diet but to the Emperor and the advisors close to the throne which often included certain members of the House of Peers. The Prime Minister is now elected by the National Diet from among its members. If the two Houses cannot agree on a selection or, if the Councillors fail to make a nomination within 10 days after one is made by the Lower House, then the nominee of the latter chamber becomes the Prime Minister of Japan.

Under the new Constitution, when the Lower House is ordered dissolved, the House of Councillors is at the same time prorogued unless called into session by the Cabinet in time of national emergency. Any measures enacted by the Upper House while sitting as the National Assembly become void unless ratified by the House of Representatives within 10 days after the opening of the next session of the Diet.

Thus, the former predominance of the House of Peers over the House of Representatives is not reflected in the present National Diet, where the Lower House occupies a definitely superior position. Yet the Councillors are charged with extremely important responsibilities in the legislative process and will undoubtedly exercise a stabilizing influence in the National Diet. Even though the House of

[18]Appendix H: 5.

Councillors may be overridden by a two-thirds vote, nevertheless, it shares equally in the responsibility of initiating and enacting the nation's laws. In those cases where party lines in the House of Representatives cause a split on an issue, not an abnormal situation, the House of Councillors in actuality assumes the role of the determining body It is unlikely that a measure once rejected by the Councillors would receive unchallenged support in the Lower House

6 Significance to Democratic Reform

The elections for both Houses of the National Diet constituted another step in the expansion of the popular franchise Japanese lawmakers in both the legislative and executive branches of government, after months of careful study, jointly devised the unique and perhaps revolutionary method of dual constituency selection for the Upper House They devised a system of democratic representation for the second chamber of a bicameral legislature which is novel in the field of political science. The two bodies are chosen by different methods in order that all interests may be effectively represented and in order that one house may act as a check or modifying influence on the other The Lower House in Japan is more widely representative of the people, but it is subject to dissolution and in any event its tenure expires in 4 years. The Upper House is not subject to dissolution but is a continuing body with members elected for staggered terms of 6 years and in cases of emergency may function as the National Diet while the Lower House is dissolved This bicameral system contains not only some of the better features of western republics and constitutional monarchies but also has new provisions which are truly Japanese in character and origin

SECTION VI

The Judicial and Legal System

Induced Revolution

The transitional phase of Japan at present has been fittingly characterized as "induced revolution." Under the Potsdam Declaration, the Japanese Government was required to:

"remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people. Freedom of speech, of religion and of thought, as well as respect for the fundamental human rights shall be established."

It is obvious that such an authoritative mandate would necessitate reforms extending over a wide field. After enforcing military disarmament, the Occupation of Japan was concerned mainly with what might be called psychological disarmament to an extent unheard of in the history of occupations. Tremendous efforts were required to establish democratic institutions and promote civil liberties.

The Occupation was conscious of the truth that the customs and traditions of a society cannot be changed by compulsion and that it takes a long time before new ideas can be assimilated in the minds and hearts of a people. Apart from continuous education and enlightenment, all that could be done from the outset was to lay the legal foundations for the sweeping changes necessitated by the broad objectives of the Potsdam Declaration. The application and interpretation of the law is as essential as its making. Since a democratic pattern of government was to be achieved, with sovereignty vested in the people, the necessary complement to the creation of a truly representative legislature was the establishment of an independent judiciary.

Obviously the Occupation could not tolerate the continuation of a system of laws contrary to its objectives but was committed to bring about thoroughgoing reforms.* With the enactment of the new Constitution of Japan and the materialization of its comprehensive bill of rights, it became mandatory to reform the basic codes and laws in order to eliminate from them provisions contrary to the new constitutional principles and to implement the Constitution by additional provisions whenever necessary and expedient.

All reform work under the Occupation has been carried out through the medium of the Japanese Government and its agencies. While in other fields, such as the purge, legislation had to be frequently directed, with few exceptions the Japanese Government acted on its

*In broad outline such reforms were required by the United States initial post-surrender policy for Japan which stated in part: ". . . The judicial, legal, and police systems shall be reformed as soon as possible to conform to the policies set forth . . . and thereafter shall be progressively influenced to protect individual liberties and civil rights."

own volition in carrying out the necessary revisions of the basic codes. This activity was supervised and guided by Government Section as the staff section of the Supreme Commander's General Headquarters responsible for the organization and functional operation of Japanese governmental institutions. Within Government Section the Courts and Law Division was in charge of the judicial aspect of government and the reform of the legal system The nature of the relationship of the members of this Division with the Japanese drafters of legislation was advisory rather than obligatory. In their almost daily contacts with the representatives of the Occupation, the Japanese on the whole demonstrated themselves as gratifyingly cooperative and open to progressive ideas. That may be explained by the fact that for the last two decades before the war a strong reform movement had existed which advocated the modernization of backward elements of the law Thus, a development which might have eventually taken place was hastened by the Occupation Except where insistence on the abrogation of laws or the enactment of new provisions was strictly required by the principles of the Potsdam Declaration or the Constitution, the Japanese were given a free hand in shaping their new legal system Consequently no attempt was made by the Occupation to impose the introduction of legal concepts and institutions patterned on Anglo-Saxon law upon basically different Japanese law.

At the beginning, the Occupation was faced with a legal system, the modern product of the Meiji Constitution, rooted in several basic codes—civil, commercial, criminal, and procedural While heavily drawn from Continental principles, it was conspicuous in the exclusion of any foreign influence which might undermine deep-seated customs and traditions, particularly the all-powerful family system.

While essential Continental features of the Japanese legal system remained untouched, a mild tendency away from German-French and toward Anglo-Saxon ideas has undeniably developed, particularly with regard to the protection of the individual from arbitrary action of officials in the exercise of judicial and law-enforcement process The legal experts who prepared the legislation endeavored to arrive at a synthesis of both systems It was fortunate that the legal advisors on the Allied side had experience in both Continental and Japanese legal systems as well as American law and practice Hence they were in a position to weigh whether and to what extent new legal devices were adaptable to the Japanese system Only if true integration into that system appeared reasonably probable were such new devices suggested and actually adopted Provided they could be convinced of the value of an institution hitherto unknown to them, the Japanese proved eager to learn from the experience of others That the two legal systems do not in reality constitute irreconcilable contrasts is more and more recognized as time goes on The idea of making possible a unified whole out of separate conceptions has been fittingly emphasized by the editorial committee of the Association of American Law Schools·

[illegible]

mon law, have for some years been moving toward what may become, in various fields of law, a common ground " (See *The Jurisprudence of Interests*, vol II of the 20th Century Legal Philosophy Series, Translated and Edited by M. Magdalene Schoch, Cambridge, Mass., 1948, Introduction, p ix)

The problem then, was to rationalize these legal concepts and institutions to conform to the new Constitution of Japan The obvious shortcomings of the Japanese legal system called for radical changes and revisions in its organizational structure and in its substantive and procedural laws. In addition, much of the new Diet legislation required constant scrutiny for Occupational as well as constitutional considerations Not without importance, was concern for the status and social position of the

judges, procurators and legal profession in general—an indispensable part of any legal system.

How that problem was unfolded, how the transition from preoccupation legal and judicial institutions into the administration of justice during the Occupation developed, was the interesting and engaging task of the Courts and Law Division of Government Section.

I. Presurrender Judicial and Legal System

The axiom that the institutions and attitudes of a nation can be understood only on the basis of its history applies above all to the legal system of a country. Without at least a brief outline of the historical developments which the law and the administration of justice underwent in Japan of the past, this report would be incomplete.

1. Historical Sketch*

Scholars divide the course of Japanese law into three periods: the first extending from prehistoric times to the early seventh century A. D.; the second until the Meiji Restoration in 1868; and the third being the modern era. History will reveal whether a fourth period will eventually be recognized as dating from the Allied Occupation.

Japanese law before the seventh century was unwritten and primitive. It appears to have dealt chiefly with the rituals of ancestor worship and to have concerned clans and families rather than individuals. This emphasis on the collective unit may be traced to the early immigration of invaders from Manchuria and from the Malayan regions. From the fourth century on, Chinese culture with Confucian morality and Buddhist religion began to penetrate the country, thus preparing the way to a Chinese pattern of governmental administration.

The first strictly legal code, which initiated the second period, was a group of short enactments of 645-6 under the Emperor Kotokuku, called the Taikwa reform. Among later enactments, the most notable code was the Taiko Code of 701. This legislation projected into a country, far too backward to appreciate and effectively apply such institutions, a centralized government, a civil service based on merit rather than birth, conscription, national ownership of land, and taxation. The old Chinese custom of providing a bell and a box outside the ruler's palace for petitioners was adopted, so that the common people might seek justice from the ruler and incidentally keep the ruler in touch with public opinion.

Yet powerful families dominated the new government as effectively as the old. From the seventh until the twelfth century the ruler (Tenno or Son of Heaven) was merely the symbol of ancestral worship and patriotism and the civil officers of the court exercised the royal power. But their rule was displaced by that of powerful feudal lords (*daimyo*) who had gradually acquired a semiindependence. By the twelfth century, although the national sovereignty remained nominally with the Emperor at Kyoto, the complete political power was vested in a regency (Shogunate) in Kamakura based on military feudal tenure. Political equilibrium was upset when the powerful daimyo could no longer be controlled by the central government and the weak regents lost their power over the emperors. Intermittent civil wars lasted until 1600, when a single clan, the Tokugawa, rose to power and reigned for the next two and a half centuries until 1868. During this period feudal conditions continued, but were modified to accommodate a quasi-

*This Chapter is based on John H. Wigmore: *A Panorama of the World's Legal Systems*, Chapter VIII, and on a study by Thomas L. Blakemore: *Postwar Developments of Japanese Law*, Wisconsin Law Review, July 1947.

ntralized government. Japan was closed to reign intercourse and the nation enjoyed internal peace in its seclusion. Separate laws and aditions governed the activities of nobles of e imperial court, warriors, commoners, and tcasts. The ownership of land was restricted the warrior classes, but merchants gradually ercame this handicap and gained a substanl economic position. Customary law varied eatly by locality. After 1600, law assumed th a local and national character.

A rudimentary national judicial system was veloped which provided for both civil and iminal actions and appeals. The daimyo were lowed to retain local jurisdiction in legal atters in their own provinces. They had their wn courts yet they were virtually under cenal control. The Tokugawa Supreme Court in [illegible] capital of Yedo (Tokyo) was given [illegible] original jurisdiction for suits between [illegible] different provinces and otherwise rved as [illegible] appellate court. A certain jurisdicon was reserved for confirming death sennces imposed by the daimyo's court on a vasl for political offenses. In all matters the aimyo's judges of [illegible] consulted the Tokugawa ourt with a view to uniformity of law. The gal-minded Tokugawa dynasty built up the ation's legal system. Yet law, for the most art, consisted of internal instructions and reglations given to officials and rarely or only artially published. The laws of land tenure nd family succession were founded on custom nd each village had its own written code of ules for local affairs. No distinct profession of egal advocates appeared, for each party was upposed to conduct his own case. To assist a [illegible] was unlawful. The trial method was idenical with that already developed in China and ontinental Europe, the inquisitorial method, which gives all responsibility to the trial magistrate.

Another important feature of the system was the principle of conciliation, also prominent in Chinese justice and a tenet of the Confucian philosophy. The tendency to settle disputes by compromise has been deeprooted in the Japanese people up to the present time. It is one explanation for the surprisingly small number of judges in Japan and for the small figures in civil litigation statistics. Even in political matters the Japanese prefer compromise to voting. Every town and village was divided into *kumi* or associations of five neighbors who were mutually responsible for each other's conduct. In case of a disagreement between members of an association, the five heads of families met and endeavored to settle the matter. If a settlement failed, the case was submitted to the next higher authority, the chief of associations. An appeal to the higher authorities was the practice in the larger towns and cities only, where the family unity was somewhat weakened.

In the village there was a great dislike toward seeking outside settlement and few private disagreements went beyond the family or association. If the association chief could not settle the matter, it was laid before the higher village officers, the elders and the headman. They formed a board of arbitration for the settlement of disputes. If the headman was unable to settle a case it was placed before the local magistrate who usually sent it back with the injunction to settle it by arbitration. When the case formally came before the magistrate for decision, it became a lawsuit and might pass to the higher courts at Yedo. The case was not treated in the strictly legalistic style of the West, but the judge aimed at general equity on the basis of customary law.

Finally, the third period began with the Meiji Restoration in 1868. The dramatic and historical facts regarding the elimination of the Shogunate and the transfer of governmental control to the Emperor are generally known. The restoration was followed by the establishment of a strong central government, the abolition of the feudal regime, and the announcement of the policy of [illegible]. In order to unify the national law and [illegible] it to the needs of an emergent capitalism, as well

as to reassure the Western powers who were reluctant to relinquish extraterritorial rights so long as unfamiliar patterns of law continued to exist, a comprehensive system of codes was enacted. In its initial contacts with the West, the Japanese legal world appears to have taken an equal interest in the common law and civil law, but it was finally decided to adopt the continental law, and particularly the German pattern. There were many reasons for this choice. Prince Ito, the outstanding statesman of the Meiji period, had studied German institutions in Germany and consulted with Bismarck, and was greatly impressed with the achievements of the newly established German Empire. The Meiji Constitution shows clearly the Prussian and Bavarian mark. Furthermore, a codified system appeared preferable because of its simplicity, and this preference was greatly supported by the presence of several outstanding French and German jurists in Japan. Thus, judicial institutions, as well as laws, were patterned on those of continental Europe.

It would be erroneous to attribute this development to an innate Japanese trait of imitating other nations. The adoption of foreign legal systems is a frequent phenomenon in the history of law. The best known example is the reception of Roman law in Northern Europe during the Middle Ages. The analogy goes beyond that. Just as the Roman law was merged with the unwritten customary Germanic law, so were certain deep-rooted customs and traditions retained in the Japanese adaptation of the continental system. The Civil Code, which was enacted after almost 30 years of study and debate in 1898, is a good illustration. Its first three books, dealing with natural and juristic persons, real property, obligations and other general matters, lean heavily on the German Civil Code. But the last two books, dealing with domestic relations, or family law, and the inheritance law, are a codification of old Japanese tribal customs.

The Commercial Code, in a sense, is an exception to the Civil Code since it removes from the effect of the Civil Code all commercial transactions, as well as other acts performed by traders or merchants. While German codes supplied the greater portion of the articles, many provisions were taken from French law, a few from the common law, and certain indigenous Japanese commercial practices were reenacted in statutory form.

The Japanese Criminal Code, dating from 1882 is also of continental European origin. The distinctive feature was the lese majesty provisions under which persons endangering the lives of members of the imperial family were punished by death, while acts disrespectful to them could be punished by penal servitude up to 5 years.

Finally, elaborate codes concerning court organization, civil and criminal procedures were enacted.

2. Relation to Continental Law

The legal system, as it developed in Japan subsequent to the Meiji codifications should not be identified with its European models. The textbooks of the codes are to a large extent similar, but their actual application and interpretation is not. In this respect the survival of old attitudes and concepts in the administration of justice in Japan has frequently led to unforeseen results in the application of the imported law, because the nation did not go through political and social developments similar to those of the western countries. Japan, in spite of its industrialization, did not experience the strong liberalism of Imperial Germany, not to speak of the democratizing forces of the Weimar Republic and of French parliamentarianism.*

The Japanese judges did not enjoy the independence of their French counterparts but were career Government bureaucrats. Moreover,

*This liberalism found its expression in the emphasis on the idea of *Rechtsstaat* (government by law) which led to the establishment of administrative courts in most states.

while in France judges were elected from among the members of the respected legal profession who were fully conversant with economic and social as well as legal problems, the Japanese judges, by virtue of their education and sociological background, were primarily legal technicians They were trained for the higher civic service in law schools where they learned only a formal and positive conception of the law In the past, legal education in Japan has been monopolized by the Imperial Universities, Tokyo Imperial being the foremost, and a few private schools Most law graduates never practiced law but entered the bureaucracy, of which the judicial branch was the least popular Conspicuous in the curriculum of the law student was the emphasis on legal-analytical studies, with very little practical training, and the stepmotherly treatment of political, sociological, and economic aspects In this respect, similar to his German counterpart, the Japanese judge considered himself a servant of the state rather than a guardian of justice in a higher ethical sense The ensuing attitude fostered a narrow application of the letter of the law enacted in the proper form by the state authority No effort was ever made to question the legality of a provision because of its substance This purely legalistic approach still exists

While in France a splendid system of administrative courts developed, climaxing in the *Conseil d'Etat*, the Japanese people did not have the right to challenge the legality of the acts of their officials, to whom they were deliberately kept in subservience To be sure, there existed one Court of Administrative Litigation The jurisdiction of this court, however, was strictly limited to such matters as taxation, business licenses, and public works The court was never popular, its judges who were selected because of their administrative background being blamed for their tendency simply to uphold the administrative action In addition, the procedure was extremely slow due in part to the fact that no system of inferior administrative courts had been established In contrast to the Third French Republic, the executive always overshadowed the other branches of the government in Japan.

This was also true of the legislative branch. Authoritarian cabinets had little difficulty in causing Diets to enact whatever statutes were demanded The Diet lacked independence, courage, and initiative Since most legislation originated in the Cabinet and member bills were a rare exception, the Diet served in many instances as a mere rubber stamp During the 10 years preceding the occupation, especially vicious legislation accompanied mobilization and the war "National Peace Preservation Law," "Thought Offenses," 'Special Police Activities," and "Protective Detentions" were products of that period

The National Peace Preservation Law provided penalties up to death for those acting as organizers, officers, members, or supporters of organizations having as their object "changing the national polity " Generally, no appeal was allowed from a judgment of the first instance which found any person guilty The Supreme Court could, however, nullify the original decision and transfer the case to an appellate court

Protection and Surveillance Commissions, under the direct supervision of the Minister of Justice, administered the provisions of the Protection and Surveillance Law against persons who had been convicted under the peace preservation law but who had either been granted reprieve or pardon from execution, or who had served their term. The avowed purpose of the law was to guide the thoughts of persons in this category in order to change their attitude and "protect" them from committing further crimes It gave the state authorities virtual power to keep under protection and surveillance anybody who, as an opponent of governmental policy, had been punished under the flexible provisions of the Peace Preservation Law which allowed almost any interpretation at the pleasure of the procurator. The maxi-

mum protection and surveillance period was 2 years although the period could be prolonged by decision of the commission. The individual concerned could be placed under the personal surveillance of the protecting official or of some duly authorized guardian, or entrusted to a protective organization, temple, church, hospital or any other appropriate organization.

3. Status of Civil Rights

The worst abuses of civil liberties were not based on statutory authority, but arose through the use of loopholes deliberately left in laws and through the development of legal fictions. The provisions of the codes of criminal procedure proved adequate in the countries of their origin to protect the individual from limitless powers of the police and prosecution with regard to arrest, detention, search and seizure. Under the Japanese practice, however, through the use of a minor administrative law not challengeable before any court, the individual was powerless and at the mercy of the police. In spite of provisions in the Criminal Code which forbade abuse of authority and torture, the Japanese police extorted confessions by constant use of third-degree methods and long detentions.

In other countries the cause of civil liberties has been championed by lawyers who, by virtue of their vocation were called upon to defend the right of the individual against arbitrary exercise of the authority of the state. The political role which the lawyers played in the French Republic and their powerful influence on legislation are well known. In Japan the lawyers, supervised and disciplined by the ministerial bureaucracy of the executive branch of Government, did not, and could not, fulfill a similar mission as defenders of civil liberties. Their social status as non-officials was below that of the judges and public procurators, a factor which weighed heavily in a country where class distinctions were so meticulously observed. The legal profession was more or less regarded as just another business. It was not efficiently organized and the bar associations then existing lacked prestige and influence.

II. Legislative Changes Affecting Legal and Judicial Institutions

1. Form of Enactment

It has been pointed out that all legislation under the Allied Occupation was enacted through the Japanese Government. On the basis of the Constitution, the normal medium is the Diet as the Legislative Branch of the Government. The policy was to give the Diet a free hand to perform its legislative function, subject only to a veto by SCAP in case an intended bill or provisions thereof was prejudicial to the objective of the Occupation. The occupying authority, of course, has the power to legislate by prerogative act. Where the mode of occupation is direct military government, as in Germany or Korea, that authority sets the standard of law and proclaims it to the people directly. The Allied Occupation in Japan, however, did not abolish the Government and its agencies as organizations, and did not adopt direct military government but utilized the existing machinery of government. However, so far as the officially stated will and command of the occupying authority goes, the free determination by the Government of the occupied country is, as a matter of course, completely excluded. Moreover, the directive of the Supreme Commander (SCAPINS) had to be implemented and transformed by the Government into domestic law. While doubtless all

organs of the occupied state are subject to the power of the occupying authority, it appeared inadvisable to charge the Diet with the task of automatic implementation of SCAP directives Nevertheless, such implementation had to be carried out instantaneously regardless of whether the Diet was in session or not Consequently, SCAP directives were transformed into Japanese law not by statutes enacted by the Diet but by ordinances. The legal basis for this device is Imperial Ordinance No 542 of September 20, 1945 which reads in part

> "In accordance with the acceptance of the Potsdam Declaration, in order to carry out items based on the demands made by SCAP, the Government may, when especially necessary, take the necessary steps through ordinances, and may establish necessary penal regulations "

Consequently, SCAP directives were implemented by Imperial Ordinances and, after the new Constitution abolished this form of legislation, by Cabinet Orders [1] Otherwise the Supreme Commander was deeply convinced that if the construction of a new system was to last, it had to be built by the people through their elected representatives in the Diet

However, since frequently no penal provisions for violations were contained in the implementing Ordinances, Imperial Ordinance No 311 was subsequently issued under the Potsdam Declaration This ordinance described acts prejudicial to the occupation objectives as. violation of directives to the Japanese Government by the Supreme Commander of the Allied Powers, orders issued by occupation force commanders of Army, corps, or divisions, to implement SCAP directives, and all ordinances or laws promulgated by the Japanese Government in implementation of these directives It contained a general clause stipulating, as penalties for violation of such directives, imprisonment not exceeding 10 years with hard labor, or a fine not exceeding 75,000 yen, or detention or minor fine

2. Abrogation of Existing Law by SCAP Directives

At the beginning of the occupation SCAP was primarily concerned with the main problem of disarmament rather than with Japan's judicial organization and law In such stages, where prerogative action is superior, legal problems retreat to the background But certain existing laws and legal practices were so oppressive and tyrannical that the need for their abrogation was urgent and could not be delayed.

In conformance with the provision of the Potsdam Declaration, which states that "Freedom of speech, of religion, and of thought, as well as respect for the fundamental human rights shall be established," and with other basic objectives of the Occupation, the most conspicuous enactments which abridged the civil rights of the people were abrogated by SCAP directives early in the Occupation

a SCAPIN 93, entitled "Removal of Restrictions on Political, Civil and Religious Liberties," issued on October 4, 1945, may be characterized as the basic directive restoring civil rights to the people It directed the Japanese Government to abrogate and immediately suspend all laws, decrees, orders, ordinances and regulations restricting political, civil and religious liberties, to allow unrestricted discussion of the Emperor, the Imperial institution, and the Imperial Japanese Government, to remove restrictions on the collection and dissemination of information, and to abolish all legal discriminations against any person on account of race, nationality, creed, or political opinion Specific legislation such as the following was listed·

(1) The Peace Preservation Law (Law 54 of 1941).

(2) The Protection and Surveillance Law for Thought Offense (Law 29 of 1936)

(3) Regulations Relative to Application of Protection and Surveillance Law for Thought Offense (Imperial Ordinance 401 of 1936)

[1] Appendix H 17, Law Concerning the Validity of the Provisions of Orders in Force at the Time of Coming into Force of the Constitution of Japan, etc , Law No 72, April 18, 1947

(4) Ordinance Establishing Protection and Surveillance Stations (Imperial Ordinance 403 of 1936).

(5) The Precautionary Detention Procedure Order (Ministry of Justice Order 49 of 1941).

(6) Regulations for Treatment of Persons under Precautionary Detention (Ministry of Justice Order 50 of 1941).

(7) The National Defense and Peace Preservation Law (Law 49 of 1941).

(8) National Defense and Peace Preservation Law Enforcement Order (Imperial Ordinance 542 of 1941).

(9) Regulations for Appointment of Lawyers under Peace Preservation Laws (Ministry of Justice Order 47 of 1941).

(10) Law for Safeguarding Secrets of Military Material Resources (Law 25 of 1939).

(11) Ordinance for the Enforcement of the Law for Safeguarding Secrets of Military Material Resources (Imperial Ordinance 413 of 1939).

(12) Regulations for the Enforcement of the Law of Safeguarding Secrets of Military Material Resources (Ministries of War and Navy Ordinance 3 of 1939).

(13) Law for the Protection of Military Secrets (Law 72 of 1937, revised by Law 58 of 1941).

(14) Regulations for the Enforcement of the Law for the Protection of Military Secrets (Ministry of War Ordinance 59 of 1939, revised by Ministry of War Ordinances 6, 20 and 58 of 1941).

(15) The Religious Body Law (Law 77 of 1939).

(16) All laws, decrees, orders, ordinances and regulations amending, supplementing or implementing the foregoing enactments.

Persons detained or imprisoned under provisions of such legislation were ordered to be released immediately.* Organizations and agencies, such as the secret police, which had been given authority to supervise publications, public meetings and to exercise surveillance and control of thought, speech, religion or assembly were ordered abolished. Certain personnel of such organizations were ordered to be removed from office and any further activity based on enactments which restricted political, civil and religious liberties was prohibited.

b. As a result of SCAPIN 93, the Japanese Government issued the following Imperial and Ministerial Ordinances specifically abrogating the above named enactments:

Imperial Ordinance No. 568, October 12, 1945.—Abolished the National Defense and Peace Preservation Law; Law for Safeguarding Secrets of Military Material Resources; Law for the Protection of Military Secrets; Temporary Law Controlling Seditious Documents; Temporary Law Controlling Speech, Publication, Assembly and Associations; National Defense and Peace Preservation Law Enforcement Order; Ordinance for the Enforcement of the Law for Safeguarding Secrets of Military Material Resources.

Imperial Ordinance No. 575, October 15, 1945.—Abolished the Law Concerning the Preservation of Public Peace; Law Concerning Protection and Surveillance for Thought Offense; Ordinance Concerning the Enforcement of the Law for Protection and Surveillance for Thought Offense; Ordinances Concerning Maintenance of Public Peace in Kwantung and Korea.

Justice Ministry Ordinance 52 of October 15, 1945.—Abolished those regulations pertaining to (1) the disposition of temporarily discharged "thought offenders;" (2) expenditures for protection and surveillance; (3) appointment of lawyers; (4) procedure for protective detention; (5) treatment under protective detention; (6) expenditures for protective detention.

Imperial Ordinance No. 638, November 20, 1945.—Abolished the Police Law for the Preservation of Public Peace and the Peace Preservation Law.

Previous to the all-inclusive SCAPIN 93, SCAP had decreed that there was to be an absolute minimum of restrictions upon freedom of speech. However, the Japanese Government was directed to prevent dissemination of news

*Actually several thousand political prisoners were released from jail.

which failed to adhere to the truth or which disturbed public tranquility (SCAPIN 16, September 10, 1945)

The press was disassociated from the Government, and barriers to dissemination of news were ordered to be removed (SCAPIN 51, September 24, 1945), in an effort to encourage liberal tendencies in Japan and to establish free access to the news sources of the world

Further steps toward freedom of speech and of the press were taken by the issuance of SCAPIN 66 on September 27, 1945, which directed the removal of peacetime and wartime restrictions on freedom of communications and the abrogation of specific laws which had given the Government complete control of all channels of expression of public opinion

In order to separate religion from the state, to prevent misuse of religion for political ends, and to put all religions, creeds and faiths upon the same legal basis, SCAPIN 448, issued on December 15, 1945, directed that governmental sponsorship, support, perpetuation, control, and dissemination of State Shinto be discontinued Affiliation with the Government and propagation and dissemination of militaristic and ultranationalistic ideology was forbidden to Shinto as well as to other religions, faiths, creeds, sects, or philosophies

The Japanese Govermnent implemented this directive by issuing Imperial Ordinance No 718, December 27, 1945, which abrogated the Religious Bodies Law, Ordinance relating to the Enforcement of the Religious Bodies Law, Ordinance relating to the Registration of Religious Bodies, Ordinance relating to the Registration of Buildings for Public Worship and their Sites

In order to eliminate certain preferential employment practices of the Japanese Government, SCAPIN 360, issued on November 28, 1945, directed the Japanese Government to insure that no discrimination be exercised or permitted for or against any worker either in private or government work, with regard to wages, hours or working conditions by reason of nationality, creed or social status The Japanese Government was further directed to revoke, rescind and abrogate all enactments of any kind which provided preferential employment and educational opportunities for demobilized military personnel solely on the basis of military service

Pursuant to this directive the Welfare Ministry issued Welfare Ministry Ordinance No 2, January 10, 1946, which interpreted these principles into Japanese law, and placed upon the local governor or the chief of the labor office the responsibility for insuring that employment practices were conducted in accordance with the principle of equal treatment

By the terms of SCAPIN 93 the Japanese Government was also directed to restore the right to vote and the right to hold public office to those persons who were released from detention, imprisonment, or protection and surveillance under SCAPIN 93 All persons affected by this directive were to be notified that their electoral rights had been restored and of the procedure which they were to observe with regard to registration or filing of candidacy for public office Accordingly, late registration and waiver of established residence requirements were to be provided for

The Japanese Government implemented this directive by issuing Imperial Ordinances No 730 and 731, December 29, 1945

Since the Japanese Government had used education to inculcate militaristic and ultranationalistic ideology, it was directed by SCAPIN 519, December 31, 1945, to suspend all courses in morals, Japanese history, and geography in all educational institutions, to suspend all ordinances, regulations or instructions directing the manner in which the specific subjects should be taught, to collect all textbooks and teachers' manuals used in the instruction of these subjects

Because licensed prostitution in Japan, the use of involving contracts whereby women were bound by contracts to serve for a stated period under condition amounting to bondage, was deemed to contravene the principle of

equality of the sexes and inconsistent with the development of individual freedom, the Japanese Government was directed by SCAPIN 642, January 21, 1946, to abrogate and annul all enactments which directly or indirectly authorized or permitted the existence of licensed prostitution in Japan, and to nullify all contracts and agreements which had for their object the binding or committing, directly or indirectly, of any woman to the practice of prostitution.

3. Diet Legislation

a. *Preparation and Phases of Enactment.* In considering the sweeping reforms of the basic codes and the administration of justice, the time element involved should be clearly understood. Extensive changes in codes pose tremendous and vastly complicated problems, even greater than legislation in common law countries where there is more variety in legal source material. It may be recalled that preparation of the Japanese civil code during the Meiji period required a full 10 years of study and discussion even though it drew heavily on the existing European models and experiences. However, extraordinary times of an almost revolutionary character require extraordinary means. The new Constitution would have remained a mere textbook of pious principles if it had not been implemented in the body of basic codes and statutes. Moreover, the Occupation, in order to carry out its clearly defined objectives, had to insist on such implementation. The Japanese Government, however, was faced with a physical problem of meeting a time limit resulting from enactment of Article 98 of the new Constitution which provides that:

> "This Constitution shall be the supreme law of the nation and no law, ordinance, imperial rescript or other act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity . . ."

In the summer of 1946 it was realized that the Constitution would be promulgated by November 1946 and therefore come into effect by May 1947, 6 months later. It was obvious that the important and time-consuming revisions of the civil court organization system, civil, criminal, and procedural law could not possibly be achieved within the 6 months from the date of promulgation of the Constitution before which no definite legislation could be drafted, and the date of enforcement.

Hasty legislation under such drastic time limitations would have been almost useless. On the other hand, if no implementing legislation at all were enacted, a chaotic legal vacuum and uncertainty would have ensued. Whole chapters of the basic laws would have been inapplicable because they conflicted with the new constitutional principles, and the courts would have found themselves groping for ethereal interpretations. In this dilemma the Japanese Government, with the approval of SCAP, resorted to the expedient of submitting to the Diet provisional bills, or bills for temporary adjustment pursuant to the enforcement of the Constitution. The legislative technique used in these interim revisions was highly irregular and justified only by the inescapable need for immediate enactment of vital revisions, even if only provisional. It was mainly used in the case of the civil code and the codes of civil and criminal procedure. The provisional laws contain only the most elementary revisions in the form of broad principles. Their temporary character was made clear by the provision that they would become automatically invalid at the end of the year 1947. This deadline later had to be extended so far as the procedural codes were concerned. The Diet enacted them in its ninety-second session but they have been replaced in the meantime by the enactment of the full and definitive revision of these laws.*

The preparatory work on the revision of the codes was started while the Constitution was still in the stage of deliberation by the Diet. The Cabinet established a provisional legislative investigating committee and a similar

*The last session of the Imperial Diet, December 27, 1946, to March 31, 1947.

group acted under the Ministry of Justice to work out the essential principles on which the revisions should be based, without doing any actual drafting. The Cabinet committee consisted of members of both houses of the Diet, members of the Supreme Court, representatives of several ministries, outstanding professors of law, lawyers, representatives of local entities, journalists, business men, and women When the committee terminated its activity at the end of September 1946 it recommended preliminary and tentative outlines of 19 bills to the Cabinet These bills covered, among other matters, the revision of the basic codes

The ninety-first session of the Diet, November 26, 1946, to December 26, 1946, adopted four major bills whose provisions implemented the Constitution and dealt with matters concerning the Imperial House, the Cabinet, and the House of Councillors No law, however, was enacted in the field of judicial administration or basic codes

The ninety-second Diet passed the following 11 laws related to the reform of the judicial and legal system

(1) Court Organization Law

(2) Law for the Enforcement of the Court Organization Law

(3) Law for the Establishment of Inferior Courts and their Territorial Jurisdiction

(4) Law Concerning the Total Number of Court Officials

(5) Law for the Emergency Measures for Compensation of Judges

(6) Public Procurators Office Law

(7) Law for Temporary Measures Concerning the Compensation of Public Procurators

(8) Law for the Temporary Adjustment of the Law of Civil Procedure Pursuant to the Enforcement of the Constitution of Japan

(9) Law for the Temporary Adjustment of the Code of Criminal Procedure

(10) Law for the Temporary Adjustment of the Civil Code Pursuant to the Enforcement of the Constitution of Japan

(11) Amnesty Law

A great many bills covering the judicial system were enacted by the first session of the National Diet, which lasted from May 20, 1947, to December 9, 1947. The following are among the more important ones:

(1) Law Concerning the Final Revision of the Criminal Code

(2) Law Concerning the Domestic Relations Court

(3) Judges Impeachment Law

(4) Law Concerning the Status of Judges and other Court Officials

(5) Law Concerning the People's Examination of the Supreme Court Judges

(6) Law Concerning the Reserve Funds of Courts

Finally, the Second Session of the National Diet, which lasted from December 10, 1947, to July 5, 1948, passed the following important laws:

(1) Inquest of Prosecution Law

(2) Amendment of the Procurators Office Law

(3) Amendment of the Judges Impeachment Law

(4) Final Revision of the Code of Civil Procedure

(5) Final Revision of the Code of Criminal Procedure

(6) Final Revision of the Civil Code

(7) Administrative Litigation Law

(8) Administrative Enforcement by Proxy Law.

(9) Habeas Corpus Law

(10) Attorney General's Office Law

(11) Family Registration Law

b *Method of Collaboration Between Government Section and Drafters of Legislation* Between members of Courts and Law Division of Government Section and the Ministry of Justice, as well as the Provisional Legislative Investigating Committee of the Cabinet, continuous conferences took place in which all aspects of the 11 bills submitted to the ninety-second session of the Diet were discussed. There was a mutual exchange of ideas which went on throughout

the period of preparation and drafting as well as after the final drafts of the Cabinet bills had been finished. In March 1947 an over-all conference for the purpose of improving and completing the bills was set up consisting of representatives of the Government Section, and of representatives of the Japanese official and legal world, including the Ministry of Justice, the Legislative Bureau of the Cabinet, and a great number of legal advisors.

A similar conference was organized in February 1948 to consider the Code of Civil Procedure. The groundwork for such conferences was thoroughly prepared beforehand in the course of preliminary meetings with officials of the Justice Ministry, and agreement on many items of the bills was reached in these preparatory discussions. There remained, however, a considerable number of problems that could not be informally settled on the working-level. These the Courts and Law Division formulated in writing and presented for the deliberation of the main conference together with a short discussion of possible solutions and suggestions for amendment or specific provision in the bill.

The Code of Criminal Procedure, consisting of more than 400 articles, required the greatest length of time and the most arduous labor. Since the administration of criminal justice affects the civil liberties of the people more than anything else, and since the psychology and methods of the police state had been so thoroughly integrated in the Japanese system and official attitude, strenuous efforts on the part of SCAP's legal experts were necessary to bring about a thoroughgoing change in this all-important law. Informative conversations with the Japanese ministerial officials went on for several months before ideas could be exchanged, conversations in which the language barrier complicated the difficulties of mutual understanding of alien ideas and concepts. While direction would certainly have been an easier method than persuasion, the members of Government Section stuck to the principle that legislation, if it were to last, should not be imposed by fiat. After three different teams, each consisting of one member of the Courts and Law Division and several representatives of the Attorney General's Office (successor to the Ministry of Justice) had terminated the preliminary discussion, sixty-odd problems of major importance were left unsolved.

Another over-all committee was then established for the purpose of discussing these problems and of arriving to final determination on how they should be solved. The committee consisted of four members of Courts and Law Division and again of high representatives of the Attorney General's Office, of the procurators' offices, of judges of the Supreme Court, and legal scholars. In addition, this time representatives of the leading Japanese bar associations and of the newly established Japanese Civil Liberties Union participated in the conference. The atmosphere was, to begin with, cool and even critical. A passive resistance to any suggestions for the amendment of the proposed bill became evident. The public procurators, who were frequently supported by the head of the Japanese group, the Assistant Attorney General, a former procurator, were naturally opposed to any curtailment of their powers and those of the police.

However, as the discussion proceeded, the Japanese representatives, and particularly the judges, lawyers and Civil Liberties men were impressed by the democratic way in which the conference was conducted. There was a complete freedom of speech and argument on the basis of absolute equality of the conferees. The proceedings of the group resembled that of a parliamentary law-drafting committee of a democratic system of government. Thus, thi; experiment developed simultaneously into a practical demonstration of the democratic process in action. While the Occupation had the undeniable power to declare certain revisions mandatory, it never used this authority. As soon as the Japanese realized that the SCAP representatives did not intend to resort to a

high-handed or prerogative attitude but were willing to benefit from Japanese legal experience and ideas, they changed their attitude and became amazingly cooperative No longer on the defensive, the judges and the lawyers welcomed many of the GHQ suggestions as valuable for the modernization and expediting of the criminal processes With each group free to speak its mind, the lawyers on a number of issues took a position diametrically opposed to that of the procurators The conference started on April 14, and lasted until May 6, 1948 Meetings were held almost every day and frequently in the morning as well as in the afternoon The result was that basic agreement was reached on all of the problems submitted

Many of the revisions developed from SCAP suggestions, but many suggestions for revisions were made by the Japanese representatives Interestingly enough, in one case the Supreme Court, motivated by a desire to be relieved from part of its burdensome duties, proposed a complete reform of the system of appeals in criminal procedure—a reform which had been independently considered by members of Courts and Law Division but abandoned as too difficult to carry out within the short time available The suggestion of the Supreme Court was accepted by an overwhelming majority of those present At the end of the conference, when the various representatives of the Japanese groups expressed their gratitude for the way in which the discussions were conducted, the leading member of the bar association emphasized his satisfaction over the fact that for the first time in Japanese history, lawyers, serving as representatives of the legal profession, had been allowed to participate in the drafting and deliberation of a Cabinet bill

Even in the case of other less important legislation the contacts of Courts and Law Division were not restricted to discussions with the ministerial bureaucrats who had drafted the bill Advice on the subject matter was also requested from legal scholars and lawyers, either officially or privately

When the bill did not originate in the Cabinet, but was a member bill, conferences were held between Courts and Law Division and the chairmen or other members of the judicial committees of the two houses who approached GHQ for advice and guidance As an illustration of an important member bill, the Habeas Corpus Act may be mentioned, one of the few enactments which drew heavily on Anglo-Saxon principles In this case the sponsors of the bill, as well as the committee members, on their own initiative requested all information they could obtain on the American relevant legal theory and practice to help them in formulating a corresponding legal procedure suitable for Japan

III. The Substance of Reforms

1. Organizational Reforms

a *Judiciary* (1) *Court Organization Law*[2] The Court Organization Law implements chapter VI of the Constitution which deals with the judicial branch of the Government The basic principles of this law are the independence of the judiciary from the executive, specifically the Ministry of Justice, and the strengthening of the prestige and powers of the Supreme Court

In the past, the Japanese judges enjoyed life tenure and were theoretically independent in the performance of their judicial functions They held the status of civil servants and were classified and remunerated in the same manner as administrative officials but they were relatively less important and invited little respect

[2]Appendix H 10 Court Organization Law, Law No 59, April 16, 1947.

—the step-children of bureaucracy. Instead of exercising judicial independence and responsibility, the judges, especially the ambitious ones, tended to answer to their jurisdictional superior, the Ministry of Justice, both for decision and discipline. Appointments, promotions and "corrective" transfers of judges were determined by the Ministry of Justice, which also decided the budget for the courts. This arrangement did not foster an independent judiciary. Furthermore, in the administration of criminal law the judges were under the continuous observation and control of the public procurators who, though attached to the courts, reported to and followed the directives of the Ministry of Justice.

The new Constitution has rectified these weaknesses, incorporating the principle of separation of powers in government. The courts are removed from the jurisdiction of the Ministry of Justice and form a separate organization headed by the Supreme Court. Public procurators and judges are no longer under the same master, a factor which in the past prevented an independent judiciary.

Under Article 76 of the new Constitution the whole judicial power is vested in a Supreme Court and such inferior courts as are established by law. The Court Organization Law, adhering to the concept of the exclusiveness of the judicial function, provides that courts shall decide all legal disputes. This brought about the abolition, among others, of the Court of Administrative Litigation. In order not to prejudice the creation and operation of quasi-judicial administrative agencies, a provision was added which leaves the way open for preliminary determination by executive agencies. Another exception is made with respect to the future establishment of a jury system for criminal cases.*

The court system itself, apart from retaining the character of a national organization, has undergone considerable changes. The new Supreme Court, *Saiko Saibansho*, has no identity with the former highest tribunal, *Daishinin*, but differs from it with regard to structural composition and functions. The most important new constitutional powers entrusted to the Supreme Court are the judicial review with regard to the constitutionality of legislation and administrative acts, and the rule-making power.

The inferior courts below the Supreme Court consist of high courts, district courts, and summary courts. The high courts have, roughly speaking, taken the place of the former appellate courts. The new district courts have assumed the functions of the old district courts and have taken over as well much of the jurisdiction of the former local courts, which have been abolished. On the lowest level is the summary court which may be compared with the institution of justice of the peace in Anglo-Saxon countries. Its jurisdiction is limited, in civil suits to less significant claims, and in criminal affairs to petty offenses. Thus it has also assumed the functions of the former police courts which have gone out of existence. At present there are 8 High Courts, whose districts correspond to the eight geographical regions of Japan, 49 District Courts, whose districts generally coincide with the prefectures, 328 branches of District Courts, and 557 Summary Courts.**

The Supreme Court is composed of one Chief Justice and 14 associate judges.*** The method of their appointment is specified by a provision of the Constitution, repeated in the law, which states that the Emperor shall appoint the Chief Justice of the Supreme Court as designated by the Cabinet, while the other justices of the Supreme Court shall be appointed by the Cabinet. The Chief Justice has no constitutional

*Japan adopted the jury system in criminal cases when the jury law was enacted in 1923. The application of the law was, however, suspended during the war. The law was inadequate and left so many loopholes that it never enjoyed popularity.

**The cities of the eight High Courts are Tokyo, Osaka, Nagoya, Hiroshima, Fukuoka, Sendai, Sapporo, and Takamatsu.

***The former Supreme Court was composed of 32 judges.

power to influence the selection of the other members of the Supreme Court Conscious of the tremendous importance of the choice of suitable personalities to the high position of justice of the Supreme Court, the drafters of the Court Organization Law provided that a consultative committee for the appointment of judges be established to give advisory suggestions to the Cabinet on the selection of candidates to the Supreme Court. While the Cabinet was not bound constitutionally to accept the advice of this committee, the device was intended as a psychological check on the Cabinet because it was anticipated that the Committee would consist of outstanding figures of public life rather than political appointees

The expectation that this would facilitate the choice of prominent candidates and discourage the selection of incompetent judges for reasons of favoritism was justified but the effect of the committee's activity actually went far beyond that The Japanese emphasis upon "face" had the strange result that when the Consultative Appointment Committee made its recommendations the Cabinet actually felt bound to accept them lest the committee lose face if its proposals were not accepted automatically and without any change The Cabinet, therefore, appointed all of the candidates designated by the committee Thus, the power to appoint the Supreme Court which constitutionally rests with the Cabinet actually shifted to the committee and for this reason subsequent amendment to the Court Organization Law abolished the committee as an institution

There remains now only the popular recall by referendum as the constitutional check on the appointment of the members of the Supreme Court The Court Organization Law refers this matter to a specific statute.[3]

The Constitution has by this means expressly recognized the political character of the highest tribunal and the interest of the people in the judges composing it It remains, however, to be seen to what extent this check will be effective in practice. It presupposes an interest on the part of the people in the character and performance of their judges which must be developed in the future by information and education

The judges of the inferior courts are also appointed by the Cabinet, but from a list of persons nominated by the Supreme Court This rule practically entrusts the personnel policy with regard to these judges to the Supreme Court Life tenure is replaced in their case by a 10-year term of office with right of reappointment for a similar term in order to permit the replacement of incompetent or otherwise objectionable judges after one term

Different qualifications have been established for judges of the Supreme Court, on one hand, and for presidents and judges of the high courts on the other The term judges in this restricted sense comprises the associate judges of the high courts and all judges of the district courts, while judges of the summary courts occupy a somewhat lower position and are recruited under less rigid requirements The law provides that the judges of the Supreme Court shall be appointed from among persons of broad vision and extensive knowledge of law and that they must be at least 40 years old Between the two extremes of rigid professional requirements, as customary in continental law countries, and complete freedom of choice, the law resorts to a compromise solution in providing that of the 15 judges of the Supreme Court, only 10 must have specifically defined experience in law, while the remaining 5 are not subject to such limitations. This opens the way for the appointment of personalities whose background differs from that of the usual expert in jurisprudence. The status of a judge is guaranteed by the provision that he shall not, against his will, be dismissed, or be removed to any other official position, or be transferred from one court to another, or be suspended from exercising his judicial function or have his salary reduced, except in accordance with the provi-

[3]Appendix H 24, People s Examination of Supreme Court Judges, Law No. 136 of 1947, November 20, 1947.

sions of the statutes relating to public impeachment[4] or national review, or unless, in accordance with provisions made elsewhere by statute, he is declared mentally and physically incompetent to perform official duties. Disciplinary punishment other than removal, suspension or reduction of salary might be imposed by judicial decisions as provided elsewhere by statute.

The retirement age has been fixed at 70 years for judges of the Supreme Court and at 65 years for judges of the inferior courts. The maximum age for judges of the summary courts has been extended to 70 years because of the lack of and urgent need for competent persons available for this low-paid position. Membership in the Diet and in assemblies of local public entities is forbidden to judges. They are not allowed to engage actively in political movements, or to hold another salaried position without obtaining permission of the Supreme Court, or to carry on any commercial business which aims at pecuniary gain.

While the law provides for supervision of judicial administration by the Supreme Court and the other courts, it emphasizes explicitly that this power of supervision shall not influence or restrict the judicial independence of judges, so far as their decisions are concerned.

The drafters of the legislation were faced with the serious problem of relieving the Supreme Court from too heavy a burden of business. Account had to be taken of the reduction of the judges in the Supreme Court from 32 to 15 and of their new additional duties, such as constitutional review and rule-making. The Court Organization Law therefore limits the jurisdiction of the Supreme Court to judgments on *Jokoku* appeals, a term characterizing an appeal from a judgment usually restricted to a review of issues of law. It was furthermore recognized as highly impractical to compel all 15 judges of the Supreme Court to participate in the decisions of every case, whether major or trifling. Therefore, the Supreme Court may conduct hearings and render decisions either through a grand or a petty bench. The details were left to the rule-making power of the Supreme Court except that the petty bench must be comprised of at least three members and that the grand bench, consisting of all justices, must sit when questions of constitutionality are involved or when the Supreme Court wants to deviate from a precedent.

An important innovation is the requirement that in the Supreme Court "the opinion of every judge must be expressed in written decision." This provision introduces into Japanese law the institution of dissenting opinion which has proved invaluable in Anglo-Saxon countries as source material for legal science and for the progress of judicial interpretation. In continental practice a judge in a collegiate court, though overruled, must write the decision on the basis of the majority opinion without bringing to light his own disagreement. The new device will simultaneously have the effect of letting the people know the views of the individuals sitting on their highest court so they may be in better position to make reasonable use of their right of recall.

Administrative affairs of the Supreme Court are managed by the so-called Judicial Assembly consisting of all the judges under the general supervision of the President of the Supreme Court. The law contains similar organizational provisions with respect to inferior courts.

The High Court decides primarily on *Koso* appeals. When the Court Organization Law was enacted, this type of appeal resulted in a trial *de novo* from judgments rendered in the first instance by District Courts. In the meantime, the character of this appeal has been changed with regard to criminal cases by an amendment in connection with the revision of the Code of Criminal Procedure. Furthermore, the Law provided to begin with that the courts could decide on *Jokoku* appeals from judgments in the second instance rendered by District Courts in cases starting in the Summary Court. This jurisdiction has been abolished in the mean-

[4]Appendix H: 23, Impeachment of Judges Law; Law No. 137, November 19, 1947.

time for the criminal procedure, which now makes the District Court the normal court of the first instance, the High Court the only court to decide on *Koso* appeals and the Supreme Court the only court to decide on *Jokoku* appeals

The High Court is a collegiate court sitting in a composition of three judges * The District Court, as a rule, handles cases through a single judge, but there are certain exceptions, particularly trial of serious criminal offenses The Summary Court, which always acts through a single judge, has jurisdiction in the first instance in civil matters over claims where the value of the subject matter of the action does not exceed 5,000 yen In criminal matters its jurisdiction has been reduced a great deal in connection with the revision of the Code of Criminal Procedure

The law finally contains elaborate provisions about court officials other than judges There are secretaries in the Supreme Court, High Courts, and District Courts headed by the Secretary General of the Supreme Court and chiefs of the Secretariat, respectively, of the other courts In addition court clerks function in all courts A Judicial Research and Training Institute is attached to the Supreme Court with a chief and teachers as its staff This Institute manages affairs related to the research and training of judges and other court officials and to the education of judicial apprentices

An innovation is the establishment of positions of judicial research officials in the Supreme Court and in the High Courts Their task is to conduct, under the direction of the judges, the necessary research in connection with the hearing and decision of cases The power of appointment, dismissal and promotion of all second-class administrative officials, formerly exercised by the executive through the Ministry of Justice, has shifted to the Supreme Court The Cabinet has, however, retained such power with regard to court officials other than judges of first-class rank, but even here it acts upon the request of the Supreme Court It may be noted that the only administrative officials in the Supreme Court who have first-class Civil-Service rank are the Secretary General and 10 out of 20 research officials

An important change has been made with regard to matters relating to the study and examination of judicial apprentices Heretofore determined by the Ministry of Justice, those matters will now be subject to the rule-making powers of the Supreme Court

Finally, it should be noted that the courts have been given a definite budgetary independence The law requires that expenditures of courts shall be independently appropriated in the national budget and that a reserve fund must be provided among these expenditures

In summary, the law is designed to create an independent judiciary and to strengthen basically the prerogatives and prestige of the Supreme Court, but the success of this fundamental reform will depend completely upon whether the Supreme Court can measure up to the immensity of the task imposed upon it. The highest tribunal needs individuals of outstanding personal independence, integrity and professional ability, as well as broad knowledge of the people's life and needs Only if these qualifications are met will the Supreme Court build up a genuine third branch of government, determined to be a strong guardian of the Constitution yet not aspiring to achieve a type of "judicial supremacy" at the expense of the other branches of government.

(2) *Law for the Enforcement of the Court Organization Law*[5] The Law for the Enforcement of the Court Organization Law provides only for the essentials of enforcement, leaving details to determination by Cabinet Order. Necessary provisions had to be made for the period of transition from the old to the new judicial

[5]Appendix H 11, Court Organization Enforcement Law, Law No 60, April 16, 1947

*Only when the High Court decides in the first instance (cases of Civil War according to Articles 77 to 79 inclusive of the Criminal Code) is it composed of five judges

system on the basis of Article 103 of the Constitution. The Cabinet considered itself free to remove judges who held office when the Constitution came into force and to appoint new ones. In fact, far-reaching continuity of tenure of Inferior Court judges was maintained and provision was made for them to be temporarily assigned to the type of newly established court most nearly corresponding to the old. Thus judges of former Local Courts were assigned to the District Court which had jurisdiction over the former Local Court district. As to the judges of the former Supreme Court, the law provided that, insofar as they were not appointed as judges to the new Supreme Court, they should be deemed to be assigned to the Tokyo High Court. To reduce the period of uncertainty for the judges to a minimum, the new Supreme Court was required to designate those persons who were to be appointed as successors to the former judges, within a period of 6 months after the enforcement of the Court Organization Law (May 3, 1947). This period was subsequently extended to December 31, 1947.

A serious problem arose with regard to appointment of judges to the Supreme Court. Since the Highest Tribunal under the new Constitution was not identical with the former Supreme Court and since the mode and procedure of appointment were defined by the new Constitution, the members of the Supreme Court were to be appointed after the Constitution had come into force and by a Cabinet formed under the provisions of the new Constitution. On the other hand, it was essential that the new Supreme Court come into existence as soon as possible after the enforcement of the Constitution. To facilitate the preparation of appointment, therefore, the law provided that the Consultative Committee for the appointment of the Supreme Court judges could take up its duties prior to May 3, 1947.

(3) *Law for the Adjudgment of Domestic Relations.*[6] In the law for the adjudgment of domestic relations the term "Court of Domestic Relations" may be misleading because it conveys the impression of an extraordinary tribunal apart from the regular hierarchy of courts. The establishment of such a court would be unconstitutional. Actually, the court of domestic relations is a branch of the district court in the regular court system,* and exercises jurisdiction over all family matters. The law defines its object as the maintenance of domestic peace on the basis of individual dignity and essential equality of the sexes. After the semifeudal house system had been abolished a need arose for bringing about a reasonable solution to domestic troubles before they reach the stage where legal action is taken. This function of conciliation and mediation had, in the past, been carried out to a large extent by the head of the house and the family council, which he dominated. With the disappearance of these institutions, an appropriate method of judicial determination and conciliation had to be introduced.

In large cities the Courts of Domestic Relations are staffed by judges who specialize in family problems, while in other areas district judges will serve concurrently as judges of the Courts of Domestic Relations. The jurisdiction of the courts will include such matters as parental power, (determination and change of person having parental power), incompetence and quasi incompetence; disappearance of persons, permission to change names; adoption or termination of adoptive relationship; legacy; wills; guardianship, including appointments, resignation, dismissal of guardian, curator or supervisor of guardianship and grant of remuneration to guardian; matrimonial relations relative to cohabitation of husband and wife, support, share of expenses arising from marriage and distribution of property.

The Court of Domestic Relations acts through

[6]Appendix H: 25, Adjudgment of Domestic Relations Law; Law No. 152, December 4, 1947.

*Subsequent amendment to the Court Organization Law creates a "Family Court" with the Court of Domestic Relations as one branch and the Juvenile Court as another.

a single judge who, before rendering a decree or effecting conciliation, may cause councillors to attend the proceedings and to give their advisory opinions Councillors are appointed every year by the district court. The number of persons to be appointed councillors and the requirements for appointment are determined by the rules of the Supreme Court

Compulsory conciliation may be rendered in certain categories or cases in which the court believes that a solution by mediation and conciliation is possible. Conciliation is effected by a conciliation committee which consists of a judge of the court and two or more conciliation commissioners The commissioners are nominated in each case by the judge of the Courts of Domestic Relations from a list of persons appointed each year by the district court, persons determined by the agreement of both parties, or any other person considered by the judge to be necessary in the disposition of the case

The Court of Domestic Relations may on its own motion submit a case on matters relating to cohabitation of husband and wife, their support and cooperation between them, to conciliation. In the course of rendering a decree the court may cause interested persons to take part in the proceedings. The decree becomes effective when the person receiving the decree is given notification. An immediate complaint may be raised against a decree within 2 weeks. In this case the decree is not effective unless it becomes final and conclusive upon the determination of a hearing.

Any person who wishes to bring an action in a case "in which conciliation may be effected" may apply for conciliation in a Court of Domestic Relations at any time. The court effects conciliation in cases of personal affairs and in other cases relating to the family except adjudication and revocation of incompetency.

If an agreement is arrived at in conciliation between both parties and if it is stated in protocol, the conciliation is concluded. The statement has the same effect as a final and conclusive decision

If the conciliation is unsuccessful, the Court of Domestic Relations may hear the opinions of the conciliation commissioners and considering equity for both parties may render a decree of divorce,* abolition of adoptive relations, etc , as long as it is not contrary to the applications of both parties In these cases, the payment of money or other property may be ordered

The sociological significance of this law, which puts the judge in the role of protector of domestic peace and advisor to the people in family problems, is obvious So far as the short time of its application permits judgment, the Japanese people are already making voluntary use of this type of judicial help. As time passes, they will become accustomed to it and overcome their traditional reluctance to approach public authorities with their private troubles. Particularly in the case of women, timidity in this respect has been observed. If sympathetic personalities are selected as judges of such courts, the people will finally prefer the new system to the paternalist form of settlement by the head of the house and the family council.

(4) *Sea Casualties Inquiry Law.* The Sea Casualties Inquiry Law and the Cabinet Order enforcing it established a marine court system or, more properly, marine boards of investigation under the jurisdiction of the Ministry of Transportation to inquire into the causes of sea casualties and to contribute to the prevention of the occurrence of such casualties.

This law established four local marine courts located at Yokohama, Osaka, Moji, and Otaru, and defined their areas of jurisdiction. Each court functions with a personnel of four judges and one commissioner, and four secretaries. The high marine court, situated in Tokyo, is presided over by a senior judge.** The law also provides that each marine court shall have the services of 12 commissioned judges, selected by

*This refers only to divorce by agreement and not to judicial divorce proper which is carried on by the regular branch of the district court

**The four judges and the commissioner are second-class officials. The senior judge of the high marine court is a first-class official.

detailed instructions are printed on the ballot in order to avoid any possible misunderstanding by the voter. Inasmuch as this is the first printed ballot provided for use by the Japanese people it will be widely publicized prior to its actual use.

(c) The law provides that a judge shall be dismissed where the majority of the votes favor such action, *except* where the number of votes does not reach a one-hundredth of the persons listed on the poll books This exception was insisted upon by the committee to guard against the possibility of the dismissal of a judge by unfavorable vote of a very small percentage of the qualified voters Since the possibility of such a small vote being cast is very slight in any case, no serious objection was raised to this provision which might be considered incompatible with a literal interpretation of the Constitution

(d) The basic rules for voting in braille points are contained in the law, with details to be provided for by Cabinet order

(e) Provision is made for contesting the validity of the examinations by action commenced within 30 days of notification of results in the Tokyo high court It is also provided that even though certain votes are declared invalid in such action, no new election will be necessary if the result is not effected thereby. Dismissal of the judge is to be effective upon expiration of the time within which an action may be brought, or if commenced, on the day that the action ceases to be pending in court or judgment overruling objections becomes final

(f) The provisions of the Law for the Election of Members of the House of Representatives which are applicable and not in conflict with the present law, are incorporated by reference in order to provide the pattern for election procedure

(g) Penal provisions for election frauds, buying of votes, bribery, obstructing voting, intimidation of voters, neglect of duty on the part of election officials and for other violations, are provided. In general, these penalties are similar to those contained in the Law for the Election of Members of the House of Representatives

(6) *Law of Impeachment of Judges* Article 78 of the Constitution provides that:

"Judges shall not be removed except by public impeachment "

According to Article 64

"The Diet shall set up an impeachment court from among the members of both Houses for the purpose of trying those judges against whom removal proceedings have been instituted

"Matters relating to impeachment shall be provided by law "

The Judge Impeachment Law,[8] which was submitted to the Diet as a member bill, implements this provision

There are two grounds for removal of a judge (a) grave violation or neglect of official duties, and (b) conduct, inside or outside the office, absolutely inconsistent with the dignity and integrity which the office requires This broad formulation resulted from a change of the original draft which was unsatisfactory in that it provided for grounds for removal allowing impeachment even for trivial reasons and restricting the impeachment authorities too much in their discretion The language of the law in its final form insures against removal when disciplinary punishment would serve as a sufficient sanction and avoids the mistake of restricting the impeachment discretion of authorities by too narrowly defined standards

An impeachment committee consisting of 20 Members of the House of Representatives is created to perform functions similar to those of the United States House of Representatives in impeachment proceedings Ten reserve members are to act in case any of the regular members are unable to do so A quorum of 15 members is necessary, to open any deliberations or pass any deliberations or resolutions. Decisions require a simple majority vote of members present, except that a resolution to proceed with an impeachment requires a two-thirds majority

[8]See Appendix II 23

Any person may lodge a motion of impeachment with the committee by presenting a clear statement of the grounds upon which he considers impeachment to be warranted. The committee itself may investigate or may request any government or public office to inquire into the facts. Authority to demand the presence and testimony of witnesses and production of records is conferred. After inquiry into the facts the committee may either dismiss the charges or file a written impeachment with the court of impeachment.

The Court of Impeachment consists of 14 members, 7 from each house of the Diet. Four reserve members from each house are also elected to serve in case of inability of regular members to act. The court sits as a collegiate body and cannot conduct hearings or render judgment unless at least five judges from each house are present.

Trials in the Impeachment Court and announcement of judgment must be public. The original draft provided that the public could be excluded if the court determined publicity to be dangerous to public order or morals. Article 82 of the Constitution allows an ordinary trial to be conducted privately upon such conditions. Since Article 78 provides for public impeachment without any modification, however, it was finally held that the Court of Impeachment was an unusual type of court to which the constitutional exceptions made with regard to the proceedings of regular courts were not applicable. Accordingly it was decided that all impeachment trials must be public. Procedural matters, insofar as not in conflict with the present law, are to be governed by the Code of Criminal Procedure. The rules for voting by the court correspond to those made for the committee.

Once removed from office, a judge cannot again hold judicial office unless he applies for and obtains judgment for recovery of qualification from the Impeachment Count on one of two grounds:

(a) If after the lapse of 5 years from the date of removal good reason exists for recovery of judicial qualification.

(b) If any new evidence is found to prove the absence of the cause of removal, or other justification exists for recovery of judicial qualification.

In judging the law, it must be kept in mind that the decision to have a judge removed only by impeachment in the case of conduct unbecoming or prejudicial to his position was made by the Constitution. The same is true of the device that the Impeachment Court must be composed of members of the Diet. Thus, the law merely carries out the constitutional provisions. Since the Diet is the highest organ of state power, it appears logical and consistent with the position of the judiciary to entrust decisions on the removal of a judge to the representatives of the people. The method used in the past of having judges decide on the conduct of their brethren, has certainly definite weaknesses, inasmuch as professional loyalty and esprit de corps among colleagues usually results in an attitude of indulgence. On the other hand, it is a well-known fact that impeachment procedure, as a heavy instrument of last resort, is used very sparingly. During the Occupation a certain reluctance of the new Supreme Court to request impeachment against one of its judges was experienced in a case in which information alleging misconduct of this judge had reached the Supreme Court. Since conclusive evidence was not available, the President of the Supreme Court took the position that he would be neither justified nor well advised to take action or to move for the opening of an impeachment procedure. For this reason it was considered necessary to revise the Judge Impeachment Law by imposing on the Supreme Court the legal duty to request impeachment procedure in all cases in which misconduct justifying removal of a judge comes to its official knowledge.*

(7) *Law Concerning the Status of Judges and*

*On July 5, 1948, the Judges Impeachment Law was amended accordingly.

other Court Officials Article 78 of the Constitution provides in part that "Judges shall not be removed . unless judicially declared mentally or physically incompetent to perform official duties. No disciplinary action against judges shall be administered by any executive organ or agency "

The Court Organization Law in Articles 48 and 49 states that removal for mental or physical incompetency or disciplinary punishment of judges shall be provided for elsewhere by statute Articles 64 and 80 of the same law provide the general basis for dismissal and supervision of court officials other than judges

In order to implement the above provisions the then Ministry of Justice prepared a draft entitled "Bill of the Status of Judges and other Court Officials," which was submitted to the Diet and enacted into law on October 29, 1947

The following is a résumé of the more important features of the law with comments on controversial provisions

A judge may be dismissed by the appointing authority when adjudged to be mentally or physically incompetent to perform his official duties where such incompetency is not of a temporary nature or when he petitions for dismissal The phrase "is not of a temporary nature" was inserted in order to guard against a possible exercise of personal dislike of one or more judges by dismissal for [illegible]

[illegible] all cases where a judge may desire to resign for any [illegible]

[illegible] be removed,

Disciplinary punishment, where the offense is not serious enough to warrant impeachment proceedings, shall be a reprimand or nonpenal fine not exceeding 10,000 yen The apparently high limit was agreed upon as necessary to enable imposition of a more severe penalty in case of aggravated or repeated offenses,

Jurisdiction is vested in each High Court over cases involving judges of district or Summary Courts within the district under the High Court's jurisdiction, and in the [illegible]

[illegible] to the judges concerned and the judicial system,

In order to avoid duplication, the law provides that disciplinary proceedings may be suspended pending the outcome of a criminal or impeachment case with regard to the judge concerned,

[illegible] is vested with rule-making power under which it determines the rules of procedure and of practice, and of matters relating to attorneys, the internal discipline of the courts " This is another example of the rule-making power of the court and of a statute which recognizes the independence of the judicial system

Finally the law provides for dismissal by way of disciplinary punishment of other officials of the courts who are not judges, and for reduction in salary, or reprimand by way of punishment in lesser cases Decision to administer punishment is in all cases left to the discretion of the courts Dismissal of such officials for physical or mental incompetency is also provided for on the same basis as dismissal of judges for similar reasons

b *Public Procurators* (1) *Public Procurators' Office Law* [9] This law is essentially a reenactment of those provisions of the former Court Organization Law which related to public procurators The need for a separate treatment of these subjects follows logically from the complete separation of courts and administrative agencies, required by the new Constitution

The procurators' organization, as before, is nationwide and made up of separate offices which correspond to the new type of courts the Supreme Procurators' Office to the Supreme Court, High Procurators' Offices to the High Courts, District Procurators' Offices to the District Courts, and Local Public Procurators' Offices to the Summary Courts Procurators are national officials and responsible to the National Government alone through the Attorney General

The procurators offices are completely separated from the courts, although procurators are subject to the rule-making power of the Supreme Court in respect to litigation. For other purposes, they are, as administrative

[9] Appendix H 12, Public Procurators Office Law, Law No 61, April 16, 1947

officials, part of the executive branch of Government. However, they have, within the jurisdiction of the Attorney General, a semi-independent status under the Procurator General who heads the Supreme Procurators' Office. Thus, while vesting the general control and supervision in the Attorney General, the law provides that with regard to the examination and disposition of particular cases he may control only the Procurator General. Within this limitation, the Attorney General, if he wants to give directives to a public procurator at an inferior court, must do so through the Procurator General, to whom also other powers may be delegated by the Attorney General. Procurators are subject to different classifications in respect to pay and rank on the basis of the existing civil-service system.

Qualifications for admission to the procurators' service have been reduced to permit an infusion of new talent. In the future, lawyers, law professors, and former judges may enter the procurators' service. It will also be possible for persons having long practical administrative experience to enter the service at the low level. This provision was necessary as a practical matter, inasmuch as it had become increasingly difficult to satisfy the need for additional personnel in the procurators' offices.

The fact that procurators' offices are badly understaffed has contributed to the unfortunate and widely criticized delay in the operation of criminal justice. The need for help through additional personnel was, therefore, obvious. The law creates the office of Administrative Secretary who shall, upon orders of the procurator, conduct business matters with which the public procurators office is concerned, assist the procurator, and engage in criminal investigation under his direction.

While not stated in express terms, procurators are the sole agents of the government who possess powers of indictment. Criminal actions in Japan can be initiated only by the procurator. The law provides that in criminal cases the functions of the procurator shall be to bring public action, request the proper application of law by courts, and supervise the execution of judgments. He may also investigate any criminal offense. In other cases under his jurisdiction, he shall perform such functions as are authorized by other laws. For instance, he represents the public interest in divorce cases and suits concerning the status of children.

Thus the law basically follows the traditional lines with regard to the status and function of public procurators. Criticism has been raised in two directions and the opinion advanced that, first, the procurator should not be appointed, but elected by the people and, second, that the procurators' offices should no longer be under the National Government. Decentralization of the procuratorial system is suggested along the lines of the local autonomous entities. The Japanese Government is vigorously opposed to such fundamental changes on the ground that popular election of procurators would make them political officials completely dependent upon the whims and changes of party politics. Their election would be determined by factors different from their necessary professional qualifications. As to the question of decentralization, the Japanese Government points out that, according to the Constitution, the Cabinet has the duty to administer the law faithfully and that the enforcement of criminal law, in particular, must be regarded as a national task. To deprive the National Government of its power to control and direct the public procurators, and to subordinate the latter to the prefectural governors or city mayors, would be all the more dangerous in view of the fact that the police have been decentralized in accordance with the new National Police Act.[10] These arguments, while not completely convincing, appear to have merit.

Accordingly, the Occupation did not want to go so far as to impose popular election and decentralization upon the procuratorial system.

[10]Appendix H: 30, Police Law; Law No. 196, December 17, 1947.

However, it was felt, and the Japanese Government recognized, that some popular check on the public procurators should be introduced. Therefore, an amendment to the Procurator's Office Law provided for the establishment of a Committee for the Examination of Qualifications of Public Procurators The task of this Committee is to determine whether and when a public procurator should be dismissed from office as "unsuitable to discharge his duties because of mental or physical disability, inefficiency or other reasons." A periodic examination of all procurators is to be conducted every 3 years. In addition, whenever the Attorney General wants to remove a public procurator from office, he may require such examination, or the committee may commence it on its own initiative. The committee is composed of 11 members, 4 members of the House of Representatives, 2 members of the House of Councillors, the Procurator General, the Prosecution Assistant to the Attorney General, and one judge of the Supreme Court, one representative of the Federation of Bar Associations and one member of the Japanese Academy With the exception of the Procurator General and the Prosecution Assistant to the Attorney General, all other members are elected by mutual vote of the organization to which they belong The Committee may order a procurator who is under examination and the chief of the Procurator's Office to which such procurator belongs to be present at a hearing and may have them state their opinions

The procurator whose qualifications are under discussion must be given notice by the committee a considerable time in advance of such meeting The committee informs the Attorney General of its decisions in case it has found that a procurator is not suitable to discharge his duties However, the opinion of the committee is advisory only and it is up to the Attorney General to determine whether or not the procurator in question should be removed Since the Japanese do not sharply distinguish between advisory and determining functions and since the nature of its membership will impart great prestige to the committee, it may be assumed that the Attorney General will follow the committee's advice.

While this check was of an organizational and personal nature, the Law Concerning the Inquest of Prosecution introduces a new functional control of the public procurators.

(2) *Law Concerning the Inquest of Prosecution*[11] In connection with discussion of the status of the public procurators, emphasis was put on the necessity of a functional check on their prosecuting in addition to the administrative check provided for by the operation of the Committee for the Examination of Qualifications Such functional check was less needed on the prosecuting activity of the procurator because unjustified and unreasonable indictments can and will be dismissed by the court It was, however, necessary with regard to the frequent case that he omits prosecution The Japanese law gives the procurator considerable latitude in the determination of whether or not to prosecute an offense Critics of the past administration of justice maintained that in Japan the criminal laws were actually applied against the poor and powerless, while the rich and powerful enjoyed almost complete immunity. In Anglo-Saxon countries, the grand jury system makes such practices difficult if not impossible However, there was almost unanimous agreement that the introduction of this system in Japan would be premature and unwise.

The law for the inquest of prosecution therefore does not establish a grand jury: the inquest does not render a true bill of indictment but is restricted to a finding of purely advisory nature It examines the propriety of a decision made by a procurator not to prosecute a particular case. In addition, the inquest may make proposals and give advice to the procurators regarding improvement of prosecutions. If a person had originally made a formal complaint

[11] Appendix H 41, Law for Inquest of Prosecution, Law No 147, July 5, 1948.

to the procurator or if he has been injured by a criminal and the procurator has not taken any action, the inquest must conduct an examination upon application. It may also, ex-officio, upon a majority vote, investigate a case in which no public action has been taken but should have been taken.

The inquest may require the procurator to present material necessary for examination and to be present at its meeting; it may make inquiries of public or private experts or organizations and request reports; it may call witnesses and examine them. If deemed necessary the inquest may ask for expert opinion as well as for legal advice.

When a finding has been made as a result of the examination, the detailed finding in writing, with the reasons therefor, is sent to the Chief Procurator of the District Procurator's Office as the superior of the procurator whose actions are in question, and another copy is sent to the Committee for Examination of Qualifications of procurators, which reviews the record of the procurator for efficiency and which advises on his removal. In addition to posting the gist of the findings on the bulletin board of the Inquest Secretariat for 7 days after decision has been made, so that it is available for public view, the inquest must give notice of the gist of the findings of the case to the person who had originally made the formal complaint to the procurator or had been injured by a criminal.

The Chief Procurator of the District Procurator's office, upon receiving such findings, shall take into consideration the findings and require indictment to be made, if he agrees with the findings of the inquest. In other words, the decision of the inquest is a recommendation, and is not a mandatory requirement that action be taken. However, since the gist of the decision will be published and since the findings will be sent to the Chief Procurator of the District Procurator's Office, and from there forwarded to the Committee for Examination of Qualifications of Public Procurators, the decision of the inquest will carry tremendous pressure behind it.

Each inquest is composed of 11 members selected by lot from among the voters for the members of the House of Representatives within the territorial jurisdiction of each inquest, there being not less than 200 inquests, at least one in each District Court area. The inquests will be established in the area where each district court and major branch of a District Court are located. Detailed technical provisions deal with the selection of the members of the inquest. Since it was deemed desirable to have some continuity of membership in the inquest, provision is made for rotation, whereby only part of the inquest goes out of office every 3 months, the term of membership being 6 months.

The chief judge of the District Court or a judge of the branch of the District Court instructs the members of the inquest in their duties and powers and administers an oath requiring them to discharge their duties fairly and faithfully according to their conscience. The meetings of the inquest are closed to the public; the matters taken up by the inquest are decided by a majority of its members; however, agreement of not less than eight members is necessary in order to decide that a case should be prosecuted.

c. *The Attorney General.* (1) The law for the establishment of the Attorney General's Office, which came into effect 60 days after promulgation, implements a letter of the Supreme Commander to the Prime Minister, dated September 16, 1947.[12] This letter pointed out in connection with the reorganization of the police that, due to the complete separation of the judiciary from the executive branch of the Government according to the new Constitution, the Ministry of Justice was no longer responsible for the administration of justice so far as

[12]Appendix H: 29, Law Establishing the Attorney General's Office; Law No. 193, December 17, 1947 and appendix D: 7, General MacArthur's letter to the Prime Minister concerning police reform and reorganization of the Justice Ministry.

the courts were concerned, and the public procurators had become subject to the rule-making power of the Supreme Court. On the other hand, the letter noted that the Cabinet was responsible for executing the Constitution and the laws enacted by the National Diet In order to reflect this constitutional separation of powers adequately, SCAP suggested that the Ministry of Justice be replaced by an Attorney General, sitting in the Cabinet as Minister of State and serving as the chief legal advisor of the executive branch of the Government.

Simultaneously, the Supreme Commander's letter suggested that the new office absorb the functions of the present Legislative Bureau of the Cabinet which could be dispensed with "in the interest of governmental efficiency and economy." In the past the Legislative Bureau of the Cabinet had in accordance with the order of the Premier drafted all bills to be submitted to the legislature by the Government and all ordinances to be promulgated Proposals of amendment or repeal were also submitted to this Bureau In the discharge of his duties, the chief of the Legislative Bureau was at liberty to present his opinion to the Cabinet (*Japan Year Book* 1937, p 104) The Bureau was staffed with top legal technicians, trained almost without exception in the law school of the Tokyo Imperial University They exercised a tremendous and, on the whole, unhealthy influence on Japanese legislation Far from restricting themselves to a formal drafting or editorial activity, they extended their functions to policy making with regard to the bills which they had to prepare or to review. In no other place of the Government did the attitude of bureaucratic legalism thrive more intensely than in this Bureau which, even during the Occupation, on several occasions raised objections of a formalistic nature to revisions of law agreed upon between other Japanese Government agencies and the staff sections of General Headquarters concerned with the subject matter. The organizational change in connection with the establishment of the Attorney General's office offered a welcome opportunity to abolish this agency and integrate its functions in the new office.

In the law, the Attorney General is characterized as the "supreme advisor of the Government on legal questions " He is a member of the Cabinet and his position is that of a Minister of State In his office are concentrated all matters relating to criminal prosecution and civil litigation, the drafting and examining of all cabinet bills, ordinances, research and expressing of legal opinions, and a number of purely executive functions, remnants of the Ministry of Justice jurisdiction Under the Attorney General are five Assistant Attorneys General, respectively in charge of prosecution, legislation, research and opinion, litigation, and executive operation. In addition, a Secretary General supervises and directs the business of the Secretariat and handles personnel, budget and accounting matters Through a subsequent amendment to the Law the Attorney General is authorized to appoint an Assistant to the Attorney General, not under classified government service and answerable only to him, to act in his stead and absence

The business of each Assistant Attorney General's Office is conducted through five bureaus charged with enumerated responsibilities.

(a) *The Prosecution Assistant.* Besides actual conduct of the prosecution, the Prosecution Assistant supervises the public procurators, and has charge of criminal investigation, extradition, amnesty, training of judicial police, the dissolution and control of ultranationalist and other prohibited organizations, investigating undesirable personnel and enforcing rules against such personnel. The latter functions, closely related to Occupation policies, were taken over from the dissolved Ministry of Home Affairs.

(b) *The Legislation Assistant.* The Legislation Assistant has charge of all the functions of the old Cabinet Bureau of Legislation, and is responsible for matters relating to foreign treaties

and affairs, finance, industry, economy, traffic and communication, legal affairs, culture, welfare and labor.

(c) *The Research and Opinion Assistant.* The work of the Research and Opinion Assistant is indicated by his title. He has charge of research and expressing opinions on domestic and foreign statutes, other laws and legal matters, and collects legal statistics.

(d) *The Litigation Assistant.* The Litigation Assistant is charged with the handling of all civil, tax and administrative litigation.

(e) *The Executive Assistant.* In addition to many administrative functions, the Executive Assistant has charge of nationality, aliens, deposits, notarial acts, registration and non-contentious matters, disposition of property of dissolved organizations, general planning and administration of penal institutions, and the correction, training and rehabilitation problems of adults and juveniles. A new and extremely important task of the Executive Assistant is the promotion and protection of the fundamental civil rights and liberties of the people, as guaranteed in the Constitution of Japan, along with matters concerning habeas corpus and legal aid for the poor or indigent.

Far reaching jurisdictional changes in the field of juvenile delinquency have resulted from the new law. It provided that for a transitional period, the Attorney General should continue to exercise the same functions over matters concerning rehabilitation of juveniles as had been exercised hitherto by the Minister of Justice, who in the past was in charge of all types of juveniles, whether delinquent or only neglected or morally endangered.* After this period a clear distinction will be made between those juveniles who have been placed under correction by a Juvenile Court and all other juveniles who only need care and protection. The first category is under the jurisdiction of the Attorney General, while the second category is exclusively within the jurisdiction of the Minister of Welfare. Beyond this, the law establishes the long-range policy that from April 1, 1949, correction and rehabilitation will no longer be administered in private institutions, used in the past as reformatories, but only in public reformatories under the Attorney General's jurisdiction. Private reformatories will continue under the jurisdiction of the Minister of Welfare for the purpose of training, education, and rehabilitation of neglected or morally endangered children.

The new law constitutes a significant step forward in conformity with those provisions of the Constitution which required a clear-cut separation of executive and judicial functions in the administration of justice. It also reflects a definite modernization of criminological concepts. It establishes a new type of top-level office in which the powers of law enforcement are concentrated insofar as the Constitution leaves such powers to the National Government. Last but not least, emphasis upon civil liberties in the law gives evidence that the enforcement of law is no longer looked upon merely from the point of view of the prerogatives of the state over its citizens but also in the light of the protection of the people's rights from illegal and unwarranted interference by their government. It is symbolic that a Civil Liberties Bureau is established in the same central authority which controls prosecution of crimes.

2. Substantive Law

a. *Civil Law and Related Laws.* (1) *Civil Code.* The Civil Code was revised twice in the course of the Occupation. The first revision was the law for the temporary adjustments of the Civil Code pursuant to the enforcement of the Constitution of Japan, which took effect on May 3, 1947. As in the case of other temporary revisions, the amendment was virtually limited to a statement of the new principles which would replace those of the old Civil Code pending a full revision. The expanded revision

*This transitional period, originally scheduled to end March 31, 1948, was extended to March 31, 1949.

which implemented these principles in detail was made in the form of a law for the revision of the Civil Code which went into effect on January 1, 1948 In the final form, it involved the revision of almost 300 articles of the existing code [13] These fell almost completely within books IV and V dealing with family relationships and succession * The revisions of the Japanese Civil Code produced probably the most far-reaching effects upon the everyday lives and activities of the Japanese people of any legislation enacted in the course of the Occupation These uprooted the centuries-old semi-feudal "house system," founded upon Confucian principles, and replaced them by a code premised upon a respect for the dignity of the *individual and equality of the sexes*

These results were accomplished by the implementation of three articles in the new Constitution which state

> *Art 13* "All of the people shall be respected as individuals "
>
> Art 14 All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status, or family origin
>
> *Art 24 Marriage shall be based only on the mutual* consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis
>
> With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce, and other matters *pertaining to marriage and the family, laws shall be en*acted from the standpoint of individual dignity and the essential equality of the sexes

The final paragraph of article 24 struck the keynote for reforms of the Civil Code, for it required the abolition of obsolete *family* relationships A novel and unprecedented procedure was the formulation of the new articles in books IV and V in a colloquial style more *readily intelligible to the general* public than the usual language in which laws are written

According to the old system, not the family consisting of father, mother, and unmarried children, but the "house"—a kind of clan group—was the basic family unit The head of the house, usually the oldest male of the group, exercised considerable legal and economic powers over the other members of the house regardless of whether he lived with them or not Thus his consent was required in case a member of the house wanted to change his residence or be a party to marriage, divorce, or adoption He owned most of the family property, and succession into property was, therefore, tied up with the succession into the headship of the house On the other hand, he had the duty of supporting the needy members of the family group

It is noteworthy that the wholesale aboli*tion of the house system went beyond the re*quirements for the implementation of the Constitution and was not directed by SCAP, whose policy was that, apart from the principles of equality of sexes and individual freedom, how to modernize and reform their family law should be left to the Japanese people themselves This policy was based on the consideration that it would be unwise to impose on an oriental country western ideas and standards in the field of domestic relations Therefore, when the Provisional Legislative Investigating Committee in its majority voted in favor of the abolition, SCAP was surprised and welcomed the resolution as the expression of a progressive attitude Significantly enough, the outcome had been considerably influenced by the vigorous arguments of two outstanding women members

As a consequence of the abolition of the house system, succession into property now takes place at equal shares among decendants, regardless of sex, and the surviving spouse, whether husband or wife, is entitled to legal share.**

[13] Appendix H 38, Law Amending the Code of Civil Procedure, Law No 120, July 5, 1948

**Few changes were enacted with regard to books I III (General Provisions, Property, and Obligations)*

**Apprehension has been expressed that this new law of succession might result in further parcelization of the small farm holdings in Japan, inasmuch as the land reform has already reduced the size of rural property Hence legislation was prepared with the objective to provide for exceptions from the rule of intestate succession established by the revised Civil Code so that agricultural assets may be succeeded to by one heir only, while the cosuccessors might be compensated in some form No agreement has been reached on the subject up to now

Moreover, all restrictions on the legal capacity of women as wives and mothers are abolished. While formerly subject to control and management by the husband, a wife will, in the future, be free to dispose of her property. The husband and wife are to share jointly all family expenses and, in the event of divorce, either party may obtain a share of property acquired by the other in the course of marriage. Furthermore, judicial divorce is provided on grounds which are applicable equally to husband and wife.* Under the old Civil Code adultery was always a ground for divorce if committed by the wife. The wife, however, could demand divorce only if the husband was sentenced to a penalty for a sexual crime.

While hitherto parental power was primarily in the hands of the father, it is now exercised jointly by the father and mother. The custody of the children is to be determined by an agreement of the parties in case of divorce, but subject always to the approval of the newly created Court of Domestic Relations, to which the Civil Code entrusts broad powers. It has already been pointed out that this court supervises all phases of parental responsibility. Among the reforms which are designed to bring about a democratization of the family, the new provision that parental consent to marriage is no longer necessary for adults may be mentioned. Matrimonial relationship is terminated by divorce, or by death if the surviving spouse applies for dissolution of the relationship after the death of the other. It is anticipated that this revision will free widows from in-law relationships which under the old system continued even after the death of the husband or after divorce. While formerly the obligation for mutual support extended to all members of a legal house, the reciprocal duties of support of lineal blood relatives now are limited by the law to the third degree of relationship and subject to the approval of the Court of Domestic Relations. An illegitimate child has been given the right to a share in the inheritance of his ancestors' property.

*The traditional institution of divorce by agreement has been retained.

Apart from these major reforms, many other changes along the lines of independence of the individual from the family have been enacted in the field of marriage, divorce, child-parent relationship, adoption, guardianship, and inheritance.

The effect of these fundamental reforms upon Japanese society cannot yet be fully evaluated. Continuous observation has, however, shown that the members of the younger generation, particularly the women, are growing increasingly conscious of their new rights. Women who in the past did not dare to sue their husbands for divorce or for property claims have discovered, in a relatively short period, that their legal status has completely changed. As a matter of course, the psychological and economic features of the house system cannot possibly disappear overnight as a consequence of a change in the law. Among the working classes in the cities, the old family system was of little interest one way or the other. However, it was of paramount concern to the urban aristocracy and the rich. The reason is obvious. Since the head of the house was legally obligated to support the needy members of the family, the sanction against violating the rules of the head of the house, namely expulsion from the house, had unpleasant economic implications chiefly in the wealthy families. The situation is similar, however, in the rural districts where the more static way of life and more traditional attitudes have a dampening effect on social progress. A leading Tokyo newspaper, the *Mainichi Shimbun*, conducted a so-called national public opinion investigation on the reforms of the Civil Code. About 3,000 people, representative of various classes throughout the country, were asked their opinion on the abolition of the house system and of the inequality of sexes. When asked whether or not they favored the reforms, 57.9 percent answered "yes;" 37.4 percent answered "no," and 4.7 percent were undecided. Among the

males 55.7 percent voted "yes" and 41.9 percent voted "no," while among the females, 60.1 percent voted "yes" and 33.1 percent "no." The reforms found more favor among the unmarried males as well as females than among the married people. The break-down in occupations gave the following figures:

	Yes (*percent*)	*No* (*percent*)	*Undecided* (*percent*)
Salaried employees	62.0	36.3	1.7
Industrial workers	58.7	33.8	7.5
Farmers and fishermen	43.3	54.6	2.1
Merchants	53.3	44.8	1.9
Students	78.2	21.8	0
Housewives	53.4	38.7	7.9

The poll, which shows the farmers and fishermen as the only group opposed in its majority to the reforms, confirms the observation made above with regard to the rural population.

This bill received more publicity before its passage into law than any other single piece of legislation. A considerable number of private committees consisting of legal scholars and representatives of women's groups engaged in studies of the provisions of the bill and in public discussions. Members of these committees traveled throughout the country to hear the opinion of the people. For the second time in Japanese parliamentary history public hearings were conducted by the Diet, which listened to the views of people from all walks of life.*

(2) *Family Registration Law*. Implementation of the new Constitution and Civil Code of Japan necessitated removal of all the objectionable power, influence, obligations, and feudalistic ramifications of the long-established house registration (Koseki) system.

The modern period of Japanese vital statistics began in 1872 when registration of births and deaths by the *Koseki* system was introduced. Before that, registration was purely a religious function, a record of deaths only being entered in the Buddhist books. The recording of marriages and divorces in the *Koseki* was started in 1886 and, while not included in the *Koseki*, stillbirths were registered beginning the same year. The *Koseki-Ho* (House Registration Act) was passed in 1898 and in the same year the responsibility for registration statistics was transferred to the Cabinet Bureau of Statistics. With the adoption of the *Koseki-Ho* under the exclusive jurisdiction of the Home Ministry, it became apparent that the purpose of the *Koseki* was primarily to record family events for "official" purposes and only secondarily to assist in the collection of vital statistics. The power of the Home Ministry to have access to the minutest detail of any individual's personal life was of inestimable value to a police state, to say nothing of examination by prospective employers, go-betweens arranging marriage, etc.

The *Koseki* system was an official record of a family or house, a term used in a broad sense to include persons connected by consanguinity, affinity, kinship, adoption or other relationship, who were legally and summarily under the jurisdiction and complete control of a designated *Koshu* or "head of the house." The recording in the *Koseki* included the head of the house, his lineal ascendancy, spouse, direct lineal descendants together with spouses, collateral family, and such persons who were not relatives but who assumed the name of the head of the house. The members of one family or house did not necessarily belong to the same household or live all together. Branches of a single family may have lived permanently separated in different parts of the country or they may have lived together as a single unit. The official registration document was filed permanently in local governmental ward offices where the head of the house maintained his legal domicile, which automatically became the legal domicile of every member of the house.

In view of a reasonable apprehension of a return to the old system, considerable attention and thought was given the question as to the necessity of any registration of the family, as

*The first public hearing was conducted on the revision of the Criminal Code on the abolition of adultery as a crime.

opposed to a separate registration for each individual. The place of the family in Japanese society and the convenience of registration through such a unit warranted the conclusion that a family register was not only desirable but necessary for the sake of practical operation, and not in conflict with the dignity of the individual as guaranteed by the Constitution.

Legally, registration is required as one of the essential elements in order to give legal effect to birth, recognition, adoption, dissolution of adoptive relations, marriage, divorce, parental power and guardianship, death and disappearance, resumption of surname by surviving spouse and dissolution of matrimonial relations, disinheritance of presumptive successor, entry into a family register, separation from a family register, acquisition or loss of nationality, alteration of name or surname, and transfer of registered locality and settlement.

Under the new Family Registration Law, which went into effect on January 1, 1948, registration is managed by city mayors, town or village headmen, all under the jurisdiction of a Judicial Bureau.[14] Formerly, supervision of the system was reposed in the district courts, an unnecessary and objectionable administrative burden on the judicial function. Under the new law, *Minseki* (civil person system) registration will be set up under *Hitto* (name of person who appears first written) and will include, at the most, only the small family unit consisting of the husband and wife and such immediate children as are unmarried and not otherwise emancipated. Briefly, the law specifies what matters are subject to registration, what information is required and who is under duty to give it, and how and where and when it must be given.

The operation of the system has been considerably simplified. The law provides certain registration rules which are mandatory in establishing and maintaining registration books, the entries in which are effected by means of a notification, report, application or demand, or copy of a document, logbook or judicial decision. A new register is required to be made up for any person in case of: marriage; having a child or adopting another person; attaining majority and separating from the register; establishing a register for the first time, such as may be done by a naturalized person, an orphan, or divorced party. Whenever a person establishes a new register, his name must be struck off his former register.

In general, every notification, whether written or oral, must be given in the proper district concerned. However, in the case of a birth or death, the notification must be given in the district of occurrence, the recorder of which then transmits the notification to the recorder of the person's registered locality. The forms for notification are designated by the Attorney General, and when signed and sealed by the responsible notifier, must contain the following information:

1. Matter concerned and date of notification;
2. Notifier's date of birth, place of residence and district;
3. Information as to transfer, former register, new register and reason, and whether another person is accompanying the registered person;
4. Any additional facts necessary clearly to establish the matter;
5. Reasons for any omissions or facts not known.

Certain additional information is required by the specific subject matters enumerated in the law as subject to registration.

Time limits within which notifications must be given shall be computed from the day on which the matter occurred. Notifications concerning agreements or matters determined by judgments or court action shall be made within ten days after same becomes final or conclusive, and a copy thereof must be annexed. Birth notifications must be made within 14 days after the occurrence, and notifications of death must

[14] Appendix H 32, *Census (Family) Registration Law, Law No. 224, December 22, 1947.*

e made within 7 days after the notifier becomes aware of the fact

The law provides for penalties, or administrative fines, under the exclusive jurisdiction of the summary courts, for certain unlawful omissions or commissions on the part of the responsible party or administrative official

An important concluding provision of the law is that any family register made up, or district established, under the former law shall be deemed similarly made up under the new law In view of the physical impossibility of changing millions of registers by the mere promulgation of a new law, it was provided that, at the expiration of 10 years (i e , January 1, 1958) from the effective date, all family registers made up under the former laws shall be revised to conform to the new family registration law

While registration may seem to be a technical and formal matter, it is intimately associated with all important events in the lives of the Japanese people and has considerable political as well as psychological implications Without the modernization and democratization of this law the reform of the family system would be incomplete and defeated

(3) *State Redress Law* Article 17 of the Constitution guarantees that "every person may sue for redress from the state or a public entity, in case he has suffered damage through illegal acts of any public official "

An analysis of Japanese law reveals that few categories of officials were made expressly and specifically liable personally for civil damages when their unlawful dispositions caused a loss to private persons Article 715 of the old Civil Code makes the employer generally responsible for the acts of his agent However, court decisions, in construing this article, were inconsistent in that some held the provisions applied only to cases involving suits between private individuals, and others held the article did create a liability on the part of the State and public officials In order to implement Article 17 of the Constitution and to resolve the existing confusion in court decisions, the State Redress Law was enacted and came into force on October 27, 1947.[15]

Generally, the law establishes liability in accordance with the continental European theory, rather than with the United States rule, by *placing primary responsibility upon the state* or public entity as such It is provided that should any public official, in the conduct of his official duties, inflict intentionally or by negligence any damages on another person through illegal act, the State or public entity concerned is under obligation to make compensation therefor Should the public official, however, perpetrate the act intentionally or by gross negligence, then he is bound to reimburse the State or public entity which has paid damages.

Liability is also placed upon the State or public entity concerned for any damage to persons caused through the existence of any defect in the construction or management of highways, rivers, or other public installations. Here again the State or public entity concerned has the right to obtain reimbursement from any other person who is responsible for causing the damages

The individual damaged may [illegible] the State or public entity charged [illegible] pointment or supervision of [illegible] question or responsible for [illegible] or management of the [illegible] question He may also [illegible] entity which defrays the [illegible] official or the expenses [illegible] lishment or management [illegible] lation.

Lastly, the law [illegible] is the injured [illegible] provided [illegible] teed by the [illegible] ance.

Discussion [illegible]

15 Appendix II 22 State Redress Law Law No 124, October 27, 1947

If the term "person" is used in a general sense, the aliens may not be denied redress because of lack of reciprocity. No case has arisen, but arguments have been advanced pro and con by Japanese jurists. The question must be left to the decision of the Supreme Court.

b. *Criminal Law and Connected Laws.* (1) *Criminal Code.* The Japanese Criminal Code, patterned on Continental Law, was an extremely modern and progressive instrument when it was enacted as a part of the codification of the Meiji period. One of its main merits was that it left much discretion to the courts and thus enabled them to do justice to the specific circumstances of the individual case. The great emphasis upon subjective guilt was another commendable feature of the code. Subsequently, since criminological concepts underwent rapid changes, more advanced theories regarding penalties were gaining ground and so many defects were noticed in the code, in 1926 the Extraordinary Legislative Committee passed a resolution for the revision of the Penal Code. A Special Investigation Committee set to work in 1931 and an outline of the revised Penal Code was drawn up. However, no essential reform was actually enacted.

On October 14, 1947, the Diet passed into law the Bill for the Partial Amendment to the Criminal Code. While this reform was primarily necessary to have the provisions of the code comply with the new Constitution of Japan, the occasion was used to bring about other revisions favored by public opinion for a long time. While no such fundamental and sweeping changes are involved as in the case of the Civil Code and its family law, the Japanese Criminal Code was bound to be essentially affected by the political and sociological revolution in which the nation finds itself at present.

The abolition of the whole chapter called "Crimes Against the Imperial House" should be mentioned in the first place because of its eminent political significance. These provisions, known under the term "lèse majesté," provided the death penalty for any person who had committed a dangerous or injurious act against the person of the Emperor or any member of the Imperial House. Even the attempt of such act was subject to death penalty if directed against the Emperor, his close relatives, or the heir apparent, while an attempted assault against other members of the Imperial House was punishable with penal servitude for life. Moreover, heavy penalties up to 5 years were provided for in case of any disrespectful act against the Emperor and other members of the Imperial House. In doing away completely with this privileged protection before the law, the Diet drew the logical conclusion from the changed position of the Emperor and from the principle of equality of all citizens under the new Constitution.* The Emperor has become the mere symbol of the State and of the unity of the people, without governmental power, while the sovereignty is vested in the people. The Emperor, who himself discarded the mythical divinity which in the past surrounded the origin and person of the ruler, is now supposed to be one of the people. Therefore, the legal protection granted him in his symbolic and ceremonial role ought to be no more and no less than the protection accorded any citizen. As the Supreme Commander expressed it in a press release of October 9, 1946, in commending the action of public procurators who had withdrawn the prosecution of news editors for lèse majesté, "to hold the contrary would constitute a direct negation of one of the basic principles of democratic government. It would serve to perpetuate the pattern of feudalism and authority and do violence to those basic freedoms acknowledged by Japan and to which

*Offenders against the honor and life of the Emperor and his family will now be punishable under the general provisions for defamation or insult and murder, manslaughter, and injury respectively. Only one concession with regard to the Emperor and his next of kin has been made in providing that the application for prosecution required in case of defamation and insult may be made by the Prime Minister instead of the Emperor or his specifically listed relatives personally.

the Emperor himself has given most hearty accord."

The concept of equality before the law necessitated another important revision of the Criminal Code. Articles 90 and 91 provided for special protection of heads of state and envoys of a foreign power staying in Japan with regard to acts of violence or threats and insults. In deleting these special crimes, the Diet emphasized that the principle of equality before the law shall exclude not only special privileges of Japanese citizens but also of foreign nationals, however high their position may be.

The Minister of Justice expressed the views of the Government on the international aspects of this revision in the House of Councillors. He referred to the inviolability under international law of the head or envoy of a foreign country and raised the question of whether the deletion of these special protective clauses might infringe upon the provision of the Constitution which reads "Established law of nations shall be faithfully observed." In pointing out that the statutory punishment for assault, threat, and defamation against any person has been increased, he arrived at the conclusion that the general provisions of the code offer adequate protection of these representatives of a foreign power in compliance with the principles of international law. It might be added that the principle of inviolability concerns the exemption of these representatives from the jurisdiction of the state where they stay or where they are sent to and does not necessarily include their privileged protection against criminal offenses, provided that the general law of that state protects them sufficiently.

The same principle of equality required a revision of the law in the very different field of sexual morality. The old law provided for punishment of the wife and the other party to the adultery. Therefore, a husband who committed adultery with an unmarried woman was not subject to punishment. Obviously, this was incompatible with the new Constitution [illegible]

[illegible] it has been committed by husband or wife.

The [illegible] of war [illegible] the Constitution of Japan [illegible] changes in the provisions concerning treason in time of war. Hitherto [illegible] assisting [illegible] or delivering war [illegible] to the enemy were punishable with death, penal servitude for life or for a long period. The same was true of spying for the enemy and betraying military secrets to him. All these provisions have been deleted, and only conspiracy with a foreign power which has forced war upon Japan by aggression remains a grave crime. As the revised code now reads, every person who conspired with any foreign state and thereby caused this state to use force of arms against the state of Japan shall be condemned to death, and every person who, when a foreign state used force of arms against Japan, has entered into the military service of such state, aiding it [illegible] [illegible]

crimes against a Japanese citizen outside of the Japanese Empire. It is obvious that such extension of domestic law to acts committed in a foreign country was tied up with the mythical concept that the Japanese, by virtue of their race and nationality, were in a superior category and that major crimes against them must be punished according to more stringent Japanese standards regardless of where in the world and by whom they had been committed. The deletion of this rule will have the effect that from now on foreigners who perpetrate crimes outside Japan will be tried only by the courts and under the jurisdictional law of the country where they have been committed.

Related to this revision is the amendment of another article which provided that even though a final judgment had been rendered in a foreign country, the same act might be punished in Japan, and that if the sentence had been executed, either in part or entirely in foreign jurisdiction, execution of the punishment might be mitigated. This provision made it possible for an offender, who had served his penalty in the foreign country, to be tried and punished again after his arrival in Japan. Since such device implied a disregard for the administration of justice in other states, this article has been amended by making mitigation or remission of the punishment mandatory on the Japanese courts instead of leaving the matter to their discretion in case the verdict of the foreign court has been in part or entirely executed.

The constitutional safeguards concerning freedom of speech and expression necessitated an important revision of the code with respect to libel or defamation. Under the old law every person who had injured the reputation of another person by publicly alleging facts was liable to penal servitude or imprisonment not exceeding 1 year or to fine of not more than 500 yen, regardless of whether such facts were true or false. This complete exclusion of truth as defense definitely infringed upon a fundamental right. It maximized the honor of an individual and afforded him protection even when by his guilt he had lost his right to such protection and prevented other persons from exposing the true nature of a man's act even where the public welfare demanded that the truth be told. A basic revision of this archaic statute was sought which would promote free speech and expression on the one hand, and outlaw calumny and blackmail in public and private life on the other hand. To achieve this, the penalty for libel has been increased to penal servitude or imprisonment up to 3 years or fine of not more than 1,000 yen. However, a far-reaching admission of truth as a defense has been introduced. According to a newly added article, the allegation of facts injurious to the reputation of another person is not punishable, if it has been made in the public interest and primarily for public benefits *and* if the alleged facts are established as true. This general exception is based on the principle that the public interest and benefit shall prevail over the consideration of private honor and reputation. Furthermore, two types of true allegations are explicitly listed as illustrations of this principle. First, facts concerning a criminal act committed by a person who has not yet been prosecuted in relation to such act shall be deemed as having been alleged in the public interest. In other words, since the punishment of crime is of vital concern to the people as a whole, nobody should be punished for helping the law in detecting offenders, provided that his allegations are true. Second, the amendment provides that a true allegation of facts is not punishable if it refers to a public official or a candidate for elective public office. Here the new legislation establishes a legal assumption that the allegation has been made in the public interest and for the public benefit. The underlying idea is obvious. Any public official and anybody who wants to be elected to public office must expect to be exposed to public criticism not only with regard to his official career, but also to his private life, because the people desire their representatives to be persons of

professional ability as well as possessed of personal integrity. Public opinion should, therefore, be encouraged to express itself freely.

The many remaining revisions are of a more technical nature Some of them are connected with the fundamental reform of the family law. They eliminate or reduce the special protection or consideration hitherto given in the Criminal Code because of the relationship of the family to the person who committed the crime. Thus, punishment was to be remitted for the crime of theft when it was committed by a lineal blood relative, spouse, relative or member of the house living together with the victim. Now this protection has been limited only to spouses, lineal blood relatives and relatives, omitting members of the house as a consequence of the abolition of this institution

Another revision aims at facilitating the extinction of punishment in criminal records, in order that the released convict might not be discriminated against because of his former status as a criminal

Finally, the penalties for a number of offenses have been increased in order to adjust them to changed concepts of the gravity of certain crimes Among them are the abuse by public officials of their powers of judicial prosecution or as police, as well as the commission of acts of violence or cruelty in the performance of such functions against a convicted person whom the official was guarding. In the first case, the maximum penalty has been increased from 7 to 10 years of penal servitude or imprisonment, and in the last case from 3 years to 7 years. It should be noted that these provisions, punishing abuse of official powers and third-degree methods, while on the statute books for a long time, have seldom been applied. As long as Japan was a police state, it required courage for an individual to demand punishment against law-enforcement officials. The new constitutional guarantee of freedom of speech, the responsibility of the executive branch of the Government to the Diet, pressure from civil liberties groups, and the popular control of the procurator's actions and omissions will make it increasingly difficult to refrain from indicting such official offenders.

(2) *Minor Offenses Law.* The minor offenses law is basically a compilation of misdemeanors, although the Japanese criminal law does not draw any legal or technical line between felony and misdemeanors In the past, these particular offenses were treated as police offenses and tried by the police courts which have been abolished The legal source was the old ordinance for punishment of contravention of police regulations Because of this historical tradition, minor offenses were not integrated in the Criminal Code They were, however, taken out of the sphere of the police adjudication

The minor offenses law replaces the old ordinance since penal provisions under the new Constitution can be enacted only by the Diet unless explicit authorization is delegated to the Cabinet Care has been taken not to reenact those former provisions which were or could probably be politically abused for interfering with freedom of speech or assembly.

The following illustrations of such [illegible] offenses punishable by minor fines (up to [illegible] yen) or detention (up to 1 month) [illegible] listed illegal possession of dangerous [illegible] loitering without fixed residence and [illegible] intention to work even though [illegible] for work; extinguishing without [illegible] on the streets or other lights placed [illegible] convenience; throwing objects in [illegible] they are likely to cause injury [illegible] others; failure to keep [illegible] other animals in [illegible] treating cattle, horses or [illegible] failing to give them [illegible] peeping into bathrooms, [illegible] places where people [illegible] urinating on [illegible]

3. *Proced[illegible] L[illegible]*

a. *[illegible]* [illegible]

of Civil Procedure was carried out, as in the case of the Civil Code, first by a provisional law—law for the temporary adjustment of the Code of Civil Procedure pursuant to the enforcement of the Constitution of Japan—and subsequently by a comprehensive revision—amendment of the Code of Civil Procedure.[16]

Although not directly required by the changes in the new Constitution, the reform of many phases of civil procedure was an important legal objective of the occupation. This was true for a variety of reasons, the principal one being the practical and physical limitations of Japanese judicial machinery. The need for reform lay particularly in the field of appellate practices, where, because of the prevalence of frivolous appeals, a tremendous burden was imposed on appellate courts. In the course of the occupation only approximately 10 percent of the civil appeals taken in Japan resulted in a modification or reversal of judgments. Furthermore, appellate procedures were extremely sluggish. It was not uncommon for cases to remain in appeal for 5, 10, or even 15 years. With the reduction of the Supreme Court from a bench of originally 32 to 15 judges, some drastic reduction in the volume of appeals, as well as in the techniques for handling appeals, was an inescapable necessity. How this could be achieved without interfering excessively with the rights of litigants was perhaps the major problem of civil procedure reform. A partial solution had already been achieved in the provisional code by restricting *jōkoku* appeal, which is mainly concerned with the interpretation of law. The general principle is that *jōkoku* appeals may be taken to the Supreme Court from final judgments in the second instance, or in the first instance if rendered by a high court. Normally, a civil suit starts in the district court, goes to the high court by way of *kōso* appeal (trial de novo) and then to the Supreme Court by way of *jōkoku* appeal. In order to relieve the Supreme Court, the previous procedure which permitted four instances in the petty cases starting in the Local Court has been abolished. Now decisions of the Summary Court may be appealed from by *kōso* appeal to the District Court and against the decision of the District Court, the parties may lodge a *jōkoku* appeal with the High Court. Thus, the Supreme Court is no longer the only court to hear *jōkoku* appeals. However, exceptions to the rule that in these cases the High Court is the court of final resort are made when questions of constitutionality are involved. Then a further *jōkoku* appeal to the Supreme Court is allowed. Moreover, it was necessary to secure the uniformity of legal interpretations and to avoid divergent decisions of the several High Courts and decisions contrary to precedents established by the Supreme Court. Therefore, the law authorizes the Supreme Court to determine by rules when a High Court deciding on *jōkoku* appeal must transfer the case to the Supreme Court.*

A secondary need existed for the improvement of trial procedures in the first instance, and a number of changes were made in this connection. For example, the right of oral argument was expanded; the use of depositions was limited to only those instances in which a witness whose testimony had previously been taken was unable to appear at trial; appeals were permitted from adverse decisions regarding jurisdiction; the possibility of shifts of judges in the course of trial were curtailed; ex officio calling of witnesses on the part of the court was prohibited; public inspection of records was recognized.

[16]Appendix H: 38, Law Amending the Code of Civil Procedure; Law No. 149, July 1, 1948.

*Rule No. 5 of the Supreme Court, *OFFICIAL GAZETTE* No. 459, October 9, 1947, implementing this provision, requires transfer of the case to the Supreme Court in the following instances: in cases in which an opinion concerning the interpretation of the Constitution or any other laws and ordinances would be contrary to that of a decision previously rendered by the Supreme Court; in cases in which an opinion concerning the interpretation of the Constitution or of any other laws or ordinances would be contrary either to that of a judgment previously rendered by another high court as the court of *jōkoku* instance or to that of a judgment previously rendered by the former Supreme Court or an old court of appeal as the court of *jōkoku* instance.

On the other hand, certain needs for a strengthening of judicial prestige and the effectiveness of court controls were also apparent One of the factors resulting in delay in many civil trials was the tendency of witnesses to ignore summons Although SCAP representatives suggested the adoption of a mild form of contempt of court, this was not followed by *the Japanese drafting committee, which felt that a successful introduction of this Anglo-*American concept would require a greater preliminary study than was possible at that time Therefore, the draft revision merely provided an increase in the ordinary variety of penalty which could be imposed on reluctant witnesses The right to waive appeals in advance of judgment was eliminated as being conducive to a denial of access to courts

A final reform achieved by revision of the Code of Civil Procedure was the provision for certain added protections of the rights of witnesses and judgment debtors. A badly outmoded attachment law was revised to provide exemptions in line with current inflationary conditions Finally, certain categories of immunities from duty to testify based upon feudalistic concepts of loyalty and obligation were eliminated, the most important of these was the right to refuse to testify against an employer or a relative within the sixth degree of blood

b *Administrative Procedure and Related Laws.* (1) *Petition Law* [17] It has already been pointed out that with the enactment of the Court Organization Law the Court of Administrative Litigation ceased to exist Apart from the few cases to which this court had been restricted, official acts of administrative agencies could not be challenged by the individual citizen Even according to the old Meiji Petition Law applications of a purely administrative character were restricted to the same matters as the jurisdiction of the court They were also subject to rigid formal requirements The new Petition Law is based on Article 16 of the new Constitution which allows every person to petition for the "redress of damage, for the removal of public officials, for the enactment, repeal or amendment of laws, ordinances or regulations or other matters" While demanding the written form, the new law removed all limitations on the subject matter of the petition Moreover it required the official or entity receiving the *petition to give it "sincere consideration" Actually this law does not express much more* than the principle already established by the Constitution The question whether a legal duty should be imposed upon the public authority receiving the application to give an answer to the petitioner had been considered by the drafters However, due to the apprehension lest the government agency might be flooded with petitions and hence such an obligation would put an unbearable burden on public officials, this idea was rejected With the new right to challenge any official act in the courts, the problem of petitions has lost much of its significance

(2) *Law of Special Regulations Concerning the Procedure of Administrative Litigation* [18] The Provisional Revision of the Code of Civil Procedure had already established the principle that all actions for the annulment or alteration of any illegal disposition made by an administrative office may be brought to the regular courts. The scope of such action was meant to be unlimited The law for the Special Regulations Concerning the Procedure of Administrative Litigation adopts this revolutionary reform and makes the provisions of the Code of Civil Procedure applicable to such actions. The old rule that the citizen must exhaust the administrative channels before he can institute an action was retained, with the important limitation, however, that if no decision was made by the administrative office within 3 months, court action could, nevertheless, be instituted. The court could also dispense with the petition if "heavy damages" were anticipated.

[17] Appendix II 6, Petition Law, Law No 13, March 13, 1947

[18] Appendix II 37, Procedure for Administrative Litigation Law, Law No. 81, June 25, 1948.

The other important provisions of the law relate to injunctions against an illegal disposition. Provisions are made to prevent the court from stopping or paralyzing the proper functions of the executive branch of the Government. Therefore, the bill admits injunctions only when the court considers them as urgently necessary to prevent irreparable damage which may result from the execution of an administrative disposition, when an action for the annulment or alteration of an illegal act made by an administrative office has been brought. This shall, however, not apply in case the suspension of execution is against the public interest. Furthermore, if the Prime Minister declared that the national interest was affected, an injunction must be rescinded. The case as to the remedy of the plaintiff would, nevertheless, continue to final adjudication.

While this provision may be viewed as an encroachment upon the judiciary, the Prime Minister can be expected to use it very sparingly in a country where his Cabinet might fall on a vote of nonconfidence as a result of a wrong political judgment. He could justify such an extraordinary action only on the basis of national interest and only if he were fully prepared to stake his political fate upon it.

In conclusion, it may be said that the unlimited safeguards which this law guarantees against interference by the state are not only a unique innovation in Japan where rule by official ukase was the law of the past but go even far beyond the remedies granted the citizens of the United States against administrative acts.

It might be argued that the law confers too much power upon the courts. However the courts can annul administrative dispositions only on the grounds of illegality and cannot pass on questions of administrative expediency and discretion. Whether the device will work in practice depends upon the future attitude of judges. They might find the right balance between safeguarding the rights of the individual on the one hand and a wise self-restraint and consideration for the practical needs of the executive on the other hand.

(3) *Law for Administrative Execution by Proxy.* The law for administrative execution by proxy was passed by the Diet on May 6, 1948, and came into effect 30 days after promulgation. It abrogated and replaced the old Administrative Enforcement Law, originally promulgated in 1900 as Law No. 84. The old law provided among other things that administrative authorities could take into provisional custody for 24 hours persons engaged in fighting or in other breaches of peace and if dangerous weapons were found upon such persons the weapons could be held in provisional custody for longer periods of time. These powers concerning provisional custody had been used by the Japanese police as a means of making various types of arrests, detentions, searches and seizures without complying with any of the procedural safeguards of the Code of Criminal Procedure. The old law thus served as an instrument for the suppression of civil liberties.

After the enforcement of the new Constitution, the provisions concerned with provisional custody became inapplicable and were superseded in part by the Provisional Amendments to the Code of Criminal Procedure. Subsequently it was decided that the old law should be formally abrogated but that certain of its provisions dealing with fulfillment of administrative obligations should be embodied, with modifications, in the new Law for Administrative Execution by Proxy.

The essence of the new law is that where a person is required by law to carry out a certain act, but fails to fulfill his obligation to the great prejudice of the public interest, the competent administrative office may proceed to execute such act on its own account, or cause a third party to perform such act and may then collect the expenses of such execution by proxy from the person under obligation to perform such act. Provisions are made for notice in advance of execution by proxy except in cases of emergency or imminent danger

where there is urgent necessity for immediate performance of the act and no time to give the normal notice. The expenses are to be collected in accordance with the procedure for collection of national taxes Provision is made for filing of objections and administrative and court appeals

c. *Criminal Procedure and Related Laws* (1) *Constitutional Guarantees* Nothing affects more the very lives of men and women than the methods by which criminal justice is administered. Life, personal liberty and honor, property and employment are at stake when a person is prosecuted and tried Therefore, the new Constitution has established elaborate safeguards for the protection of the individual in the field of criminal justice.[19]

No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed except according to procedure established by law The accused has the right to speedy trial, a very important safeguard against the old custom of protracted trials He may have the assistance of competent counsel and examine witnesses In the past, even persons suspected of only minor offenses were frequently long held in police custody without being tried, and confessions were often extorted by third-degree methods The law, while forbidding such procedure, left loopholes for circumvention Now the Constitution sets up the rule that no person shall be apprehended except upon warrant issued by a judicial officer which specifies the offenses with which the accused is charged. He shall not be detained without adequate cause which must be shown in open court in his presence and in the presence of his counsel. Infliction of torture, as well as cruel punishment, is absolutely forbidden

The two revisions of the Code of Criminal Procedure implement the constitutional safeguards in the spirit of a fundamental change of the criminological attitude While the provisional revision restricts itself to essential reforms and has been thoroughly supplemented and intensified by the final revision, it represents a more elaborate piece of legislation than the other provisional codes. The expedient of provisional legislation proved useful in this case because the legislators were in a position to learn from experience with the provisional law Its provisions will be treated separately inasmuch as they were reenacted in the final codification.

(2) *Law for the Temporary Adjustment of the Code of Criminal Procedure Pursuant to the Enforcement of the Constitution of Japan* The most important reforms are those designed to carry out the principles of the Constitution with regard to arrest and detention The law provides that no public procurator or judicial police officer shall have the power to issue a warrant of arrest or detention Only a judge may issue such warrant As a rule, a warrant of arrest must be procured before apprehending a suspect on reasonable ground of suspicion

However, the need for a practical device to facilitate the prompt apprehension of a criminal necessitated two exceptions from the rule that the judicial warrant must precede the arrest Exception is made when there are sufficient grounds to suspect the commission of a serious felony, if in addition, because of great urgency, a warrant of arrest could not be obtained beforehand from a judge In such a case a public procurator or a judicial police official may apprehend the suspect, but must immediately request a warrant of arrest from a judge afterward, and if such warrant is not issued must release the suspect at once The second exception is made when an individual is apprehended in the actual commission of a crime.

In all cases of arrest the warrant of detention must be requested from a judge by the public procurator without delay, and in any event within 72 hours from the time of physical apprehension of the individual. Under the old law this period began from the time the apprehended person was brought to the police sta-

[19]Appendix C 21, Constitution of Japan (Arts 31-40).

tion, which made it possible for a police official to delay delivery of the apprehended person by holding him in confinement at a place other than the police prison. The new time provision renders such tactics impossible since the 72-hour period starts from the moment of the physical apprehension and thus rectifies an old abuse. If the warrant of detention is not issued by the judge on request within 72 hours, the apprehended person must be released immediately.

The revised code provides another equally important guarantee of speedy trial. If the public procurator does not bring public action within 10 days after requesting warrant of detention, the suspect must be released.*

Following the principle established in Article 37 of the Constitution, the court must provide counsel for those who cannot afford to hire counsel themselves. Heretofore, the court had to appoint counsel only if the crime was a felony or in certain other special cases involving incompetents and minors and then only upon the advice of the public procurator.

To guard an accused further against arbitrary action, the law abolishes preliminary examination, which generally assumed the character of an "inquisition" and unduly prolonged the criminal process.

The right of privacy in the home, guaranteed by Article 35 of the Constitution, is unequivocally set forth in those provisions of the law which permits a public procurator or judicial police officer to seize, search, or inspect only with a judicial warrant, except when a criminal is arrested while in the commission of a crime or when they are executing a warrant of arrest or detention.

(3) *Law Concerning the Revision of the Code of Criminal Procedure.* The Law Concerning the Revision of the New Code of Criminal Procedure, which was passed by the Diet on July 5, 1948, will become effective on January 1, 1949.[20] The relatively long period between enactment and enforcement was considered necessary to enable judges, procurators, and lawyers to familiarize themselves in the meantime with the sweeping innovations. The account of the conferences preceding its formulation for its submission to the Diet has been related in another part of this report. The following are the highlights of the revision.

Under the old Code, procurator and police records of the examination of suspects, accused or other witnesses, were submitted to the trial court with the indictment. Thus the court could form a conclusion about the case and was frequently prejudiced before the trial began. Moreover, in many cases the only evidence or main proof of guilt offered during the trial was a confession obtained by torture or other third-degree police methods.

Under the new code, persons asked to appear for interrogation by police or procurators will even have the right to refuse and, if they do appear, may refuse to answer any questions and, if not under arrest, may leave at any time. Police and procurator interrogation records will not be referred to or submitted to the court with the indictment before trial and may not be used during the trial as a substitute for oral testimony of witnesses who are available to testify in court but who are not called. Witnesses who are available will testify in the court where their demeanor can be observed and be subject to cross-examination. No conviction may be based solely upon a confession, whether the confession is made in open court or outside the court, and no confession will be admitted in evidence if there is any possibility it was not made freely and voluntarily.**

Formerly, the accused was not given a copy

[20]Appendix H: 42, Law Amending the Code of Criminal Procedure; Law No. 131, July 5, 1948.

*The experience made in the application of this provision indicated that in complicated cases this period was inadequate. Therefore the final revision provides that the procurator may apply to the court for an extension of this period for not more than ten additional days.

**The reference to confessions in open court was explicitly made in the law because the Supreme Court in one of its first interpretations of the new Constitution had held that par. 3, Art. 38, of the Constitution which states that "No person shall be convicted or punished in cases where the only proof against him is his own confession," did not apply to confessions in open court.

of the indictment before trial and, since service by publication was permitted, his trial could be carried on in his absence without his knowledge. The new code requires that a copy of the indictment must be served on the accused within 2 months after it is filed in the court or it will lose its validity retroactively Service by publication will not be permitted The accused must be summoned for the trial and, except in the case of relatively minor crimes, the trial will not proceed in his absence or that of his defense counsel. A new provision is made stopping the running of prescription during the time that a person is absent from Japan or so conceals himself that a copy of the indictment cannot be served upon him

The court will notify the accused of his constitutional rights to defense counsel and to refuse to answer questions during the trial An accused held under restraint will have the right to be informed in open court of the reasons for his detention and to be released if he has been detained for an unreasonably long period Such release may be with or without bail An accused who requests release upon bail shall be so released as a matter of right except in cases of very serious crimes or if he is an habitual criminal

Under the old code release on bail continued even after a conviction pending appeal or execution of a finally binding judgment Under the new code bail or suspension of detention will lose its effect at the time of rendition of sentence to imprisonment or graver penalty However, the court will have discretion to allow bail to continue pending appeal.

In the past the presiding judge was the towering figure of the trial He alone examined the witnesses Under the new code both the procurator and the accused or his counsel are given a right to question witnesses. As a general rule, the judge will ask preliminary questions before the questioning by the parties starts but he has discretion to permit the party which called a witness to examine such witness first if he deems it proper The parties will also be given greater opportunity to challenge the probative value of testimony and to object to rulings and orders of the court. The court will have greater power to separate or consolidate trials in its discretion and will order separate trials when necessary to protect the interest of codefendants

The categories of persons who were privileged to refuse to testify or to testify unsworn under the old code, because they were remotely related to the accused or had the accused as a patient or a client, are considerably reduced in the new code All witnesses who can understand the nature of an oath will be sworn, but a witness may refuse to answer any question which may tend to incriminate himself or a person who is or was his spouse, a blood relative within the third degree, a relative by affinity within the second degree, a guardian, or a ward Physicians, dentists, midwives, nurses, lawyers, patent agents, notary publics, and religious functionaries may refuse testimony in respect to secrets of their patients or clients or communicants unless the patient or client has consented to their testifying or the court finds that the privileges are invoked solely for the protection of the criminal and not the patient or the client, as for example where the latter is dead and cannot waive the privilege Rules of the Supreme Court may permit other exceptional cases in which such testimony may be compelled In addition to noncriminal enforcement fines, witnesses who refuse to appear or to be sworn in or testify without good reason will be subject to criminal penalties including fines or detention or both

Perhaps the most important reform concerns the problem of appeal which, in the case of criminal procedure, is even more crucial than in that of civil procedure The Japanese appeal system was based upon the continental law principle that the appellant is entitled to a complete retrial of all the facts in the appellate court on a *Kōso* appeal. In a case which started in a Local Court, a complete retrial of the facts

could be obtained on appeal to the District Court, a second complete retrial of the facts on appeal to the High Court, and finally a *jōkoku* appeal on the law to the Supreme Court. With the shortage of judges, procurators and lawyers in Japan, this appeal system caused great expense and delay and resulted in an ever increasing accumulation of untried cases on appellate court calendars. The provisional code provided for the same relief as was introduced in the Code of Civil Procedure by excluding, as a rule, *jōkoku* appeal to the Supreme Court if the case was tried in first instance by the summary court. Since the new reforms in trial procedure require examination of all available witnesses in court by judges and parties, and the parties will have the right to object to admissibility of evidence, the process of trying a case will be even slower and more complicated. To repeat this elaborate procedure all over again at least once and sometimes twice on appeal would place an intolerable load on the already overburdened procurators and appellate courts and make the constitutional right of speedy trial a mockery.

Under the old system of trial procedure, where the rights of the accused were not adequately protected, the full retrial by a court of second instance was felt to be a necessary safeguard. But with the far stronger protections now afforded the defendant under the new trial procedure full retrial of a case by an appellate court will no longer be necessary and would be wasteful and socially undesirable.

Consequently, the nature of *Kōso* appeal has been essentially changed under the new code. The appellate court will never completely retry the case. It will examine the record of the court below, the arguments of appellant concerning errors committed during the trial, and may call some witnesses and hear some new evidence in order to determine whether or not the original judgment was correct. If the appellate court finds that the original court has made a material error in a finding of fact, it may order the lower court to retry the entire case, or it may reverse, affirm or modify the judgment and render sentence if the true facts are sufficiently clear from the record of the lower court and such new evidence as has been heard on appeal.

All *Kōso* appeals, including questions of facts as well as of law, will be heard in the high courts, whether from judgments in the district courts or directly from the summary courts. The Supreme Court will only hear a limited type of *jōkoku* appeal based upon an alleged violation of the Constitution or an incompatibility of a judgment with the former decisions of the Supreme Court or of high courts acting as courts of appeal. However, the Supreme Court will have discretionary power to hear appeals in any other cases which it deems involve an important problem of construction of law. This type of appeal, somewhat similar to the writ of certiorari in the United States Supreme Court, will be allowed only in accordance with the rules of the Supreme Court.

Other important changes in the appeal system under the new code include elimination of incidental or cross-appeal by the state in cases where the defendant appeals first, and a provision that where the state appeals unsuccessfully the accused shall be compensated for the expenses incurred by him because of the appeal. These changes will alleviate somewhat the hardship to defendants under the old system of unlimited state appeal.

Under the old code, even after a judgment had become finally binding because it had been affirmed on appeal or because the time to take an appeal had expired, new trials or a reopening of proceedings were permitted for the benefit of the state as well as the accused in certain very limited categories such as where there was proof of miscarriage of justice, bribery of a judge, or forgery of evidence in the court of first instance. In order to comply with the prohibition of double jeopardy under the new Constitution, new trials or reopening of proceedings will in the future be permitted only for the benefit of the accused. Provisions concerning use of these procedures for the benefit of the

state have been completely eliminated

The far reaching reform legislation concerning the Code of Criminal Procedure was absolutely required not only by the new Constitution, but also by the generally recognized need for a modernization and humanization of the criminal process As far as legal safeguards of the accused are concerned, continental and common-law ideas have both contributed to what, it is hoped, may be a merger of the two systems The law, as it reads now, is certainly a modern instrument which will free the Japanese administration of justice of many weaknesses if it is energetically and faithfully applied.

(4) *Law for the Amendment of the Juvenile Law* Up to the present time, the system for handling juvenile delinquency has been a complicated one A juvenile who violated the provisions of a law or ordinance, and who was either apprehended by the police or referred to the authorities by his parent or guardian, was brought to one of the 10,000 offices of the Judicial Protective Society, a quasi-official organization under the control and supervision of the Attorney General's Office Decision was made there to refer the juvenile to welfare organizations, for supervision and rehabilitation, or to the District Procurator's Office, where the procurator decided if the juvenile should be treated as a criminal offender If the juvenile was referred to a procurator's office or if he was brought in directly to a procurator, serious offenders were held for trial in the District Court, while in minor offenses warranting imposition of a light penalty the procurator referred the juvenile to one of the so-called Juvenile Courts (*Shonen Shinpan Jo*) The "Juvenile Court" which was established in the largest urban centers where delinquency was most prevalent functioned as a probation department of the procurator's office and was not part of the judicial system at all. Operating under the procurator, it constituted an agency of the Attorney General's Office and was staffed by officials of that office.

This system had two basic defects The procurator did not maintain supervision over the Judical Protective Society and the institutions and homes to which the juveniles were committed by the responsible authorities, and there existed no system of checks to control the decisions made by the procurators.

As a result of the Law for Amendments of the Juvenile Law, the Court Organization Law was amended to create an independent court called the "Family Court" One division of this court consists of the Domestic Relations Court, formerly a branch of the district court, while the other division is the juvenile court The juvenile court is, therefore, a division of an independent court, which is an inferior court and part of the judicial system, rather than a part of the Attorney General's Office, as formerly The court has jurisdiction over

i juveniles (under 20 years of age) who have violated any criminal law or regulation,

ii those juvenile delinquents whose history is such that it appears likely they will commit crimes,

iii adults who commit certain specified offenses against juveniles

The court may not impose a sentence more severe than detention (for less than 30 days) or a fine If the juvenile over 16 years has committed an offense punishable by death or penal servitude or imprisonment, the Juvenile Court may transfer the case to the public procurator if the Juvenile Court judge so desires However, if the court decided that the juvenile whose offense falls within its jurisdiction should be tried by the Juvenile Court, then the "trial" may be conducted either in or out of the court room and must be conducted in camera and in an informal atmosphere The juvenile and his guardian may have an "attendant" as counsel. If the attendant is not an attorney, the court's approval must be obtained for selection. The court may admonish a juvenile verbally, may return the juvenile to his guardian under such conditions as the court may determine, may commit the juvenile to a suitable [illegible] organization or individual, may place the

juvenile under the supervision of the Local Juvenile Protection Committee, may send the juvenile to a child welfare agency, or may commit him to a reformatory which is under the jurisdiction of the Attorney General's Office. However, juveniles under 14 years must be placed under the supervision of welfare authorities.

Provision is made for the use of investigators and for use of such medical, psychological, educational, sociological and other technical aid as the court finds necessary. Appeals may be taken within 2 weeks of the decision by the juvenile court to a high court on the grounds that the decision was in violation of laws and ordinances, that there were material errors in finding of fact, or that the disposition made was remarkably unfair. If the appeal is dismissed by the high court, an appeal from the dismissal may be made to the Supreme Court, but only on the ground of unconstitutionality.

4. Miscellaneous New Legislation

a. *Habeas Corpus Act.*[21] Article 31 of the new Japanese Constitution provides that "No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law." To implement this principle, essential to the preservation of civil liberties, some form of relief from arbitrary incarceration, along the line of the Anglo-Saxon writ of *habeas corpus*, had to be introduced into the Japanese law. The policy of the Government Section toward introducing such a novel device was that of waiting for the Japanese to take the first step, since in this field of legislation it would have been especially harmful to impose the legal concepts of the occupant. It was gratifying that the Japanese, recognizing the need, took the initiative toward this reform. Several drafts were prepared, independently, by the old Supreme Court, the Ministry of Justice, the Provisional Legislative Investigating Committee, and a bar association. Although actually introduced by a member of the Diet, the Habeas Corpus Act as finally enacted incorporates the conclusions drawn from many months of study of the various proposals in which Courts and Law Division had been an advising participant.

The act contains the procedures by which a person, whose physical freedom has been restrained other than by the proper legal processes, may apply for relief. It should be noted that the remedy applies only to illegal restraint. Therefore the court cannot go into the merits of a detention provided that it is made by the authority having legal power to do so. If a person is being so restrained, *any* person may present an application on his behalf to the high or district court which has jurisdiction over the place of restraint. The application, which may be either oral or written, must be made by an attorney. However, in extraordinary circumstances, it can be made by the applicant himself. The applicant must state the substance and reasons for the application and particularly, if known, the name of the person restrained and the place of restraint, and must offer necessary basis for presumptive proof.

The court which receives the application may dismiss it when it lacks an essential element or necessary presumptive proof. It may also transfer the case to such other court as it deems proper either upon request or upon its own initiative. The Supreme Court has the power to require a lower court to transfer a pending case, irrespective of the stage of its proceedings, and may dispose of it directly.

In order to prepare for an examination at a hearing, the court may make the necessary preliminary investigation of the reasons for the restraint and other matters by hearing the statements of the person effecting the restraint, the legal representative of the applicant and interested parties. The preliminary investigation is conducted by one of the judges of the

[21] Appendix H: 39, Habeas Corpus Act; Law No. 199, July 1, 1948.

court The court which received the application must immediately notify the Supreme Court of the case and report to it on the progress made and on the results This enables the Supreme Court to determine whether or not it wants to take over the case

The court may, subject to the condition of reappearance at any time in response to a summons, temporarily release the person being restrained either upon the guarantee of an attorney, or with or without the posting of a monetary bond, or take any other appropriate action before the issuance of a judgment

When it is evident from the results of the preliminary investigation that no grounds exist for the application, the court may dismiss the application by means of a ruling without conducting a hearing In this case, when the court has released the person temporarily on condition of reappearance at any time in response to a summons, it summons the person to appear and surrenders him to the person effecting the restraint

The usual procedure followed by the court is to designate a date and place for a hearing and to summon the applicant or his attorney, the restrained person and the person effecting the restraint The court orders the person effecting the restraint to produce the person being restrained at the time and place specified and to submit by that date a written answer stating the time, place and reason for such restraint A statement is appended notifying the person effecting the restraint that he is subject to arrest and detention unless he complies with the said order and/or a fine not exceeding 500 yen per day for successive days of delay There must be a 3-day period between the service of the order and the date of examination but in special circumstances this period may be shortened or lengthened The court which originally issued the warrant producing the restrained person and the procurator concerned in the case are notified of the order given to the person effecting the restraint. Representatives of this court and of the procurator's office may be present at the examination.

The examination on the day of hearing is conducted in open court The detained person and his attorney are required to be present and when there is no attorney, the court *must* select one from the members of the bar. Previous to this if the person being restrained had requested that an attorney be engaged the designated attorney must have been informed immediately by the person effecting the restraint. If no attorney was designated or if the designated attorney was unable to serve, the person effecting the restraint must have transmitted the request to the local lawyers association in the district where the person was being restrained

On the day of the hearing, the court considers the contents of the application, the reasons, and the answer of the person effecting the restraint and conducts an investigation on the basis of evidence If the application is found to be groundless as a result of the hearing, the court rejects it by a judgment and delivers the restrained person over to the custody of the person effecting the restraint If the application is found to have adequate grounds, the court immediately releases the person being restrained by means of a judgment An appeal from the judgment of a court may be made to the Supreme Court within 3 days after such judgment has been rendered The Supreme Court is also empowered to cancel or alter ex officio the decision or action taken by the lower court

The act provides that any person who has removed, concealed the person restrained, or committed any other act which interferes with the relief provided by the Habeas Corpus Act or any person who has made a false statement in the written answer to the order requiring information as to the time, place and reason for the restraint of an individual, is subject to punishment by penal servitude of 2 years or less or by a fine of 50,000 yen or less.

Necessary rules governing the applications, hearings and other procedures may be made by the Supreme Court

b. *Amnesty Law.* With the coming in force of the new Constitution on May 3, 1947, amnesty was no longer an imperial prerogative but the responsibility of the Cabinet.* An Amnesty Law therefore, enacted by the ninety-second Diet, came into effect on the same day as the Constitution.

The law contained provisions relating to the following types of relief afforded from the operation of criminal penalties: general amnesty, special amnesty, commutation of punishment, reprieve, and rehabilitation.

(1) By general amnesty, which is granted by a Cabinet order specifying certain offenses, convictions lose their effect and the right of prosecution is extinguished.

(2) By special amnesty, which is granted individually to specified persons, convictions lose effect.

(3) General commutation of punishment, granted by a Cabinet order which specifies the offenses or penalties to be commuted, mitigates the penalties, while special commutation of punishment is granted by the Cabinet with the same effect to individual persons who have been condemned.

(4) Reprieve exempts a criminal from the execution of penalty and is granted individually.

(5) General rehabilitation is granted by Cabinet orders specifying the conditions to be applied to those convicted criminals who have been deprived of, or suspended from, their civil rights or qualifications because of their conviction. Rehabilitation restores the deprived or suspended rights or qualifications.

(6) Special rehabilitation applies individually and has the same effect.

Regulations concerning the enforcement of the Amnesty Law stipulated that a public procurator or chief of the prison where individuals are imprisoned may petition the Attorney General to grant special amnesty, special commutation, reprieve or special rehabilitation. If these privileges are granted, the Attorney General delivers a writ either of special amnesty, of commutation of punishment, of reprieve or of rehabilitation to the public procurator to be handed over to the persons concerned. The public procurator then enters the fact of amnesty whether it is general or special and other relevant information about it in the original of the court decision. None of these types of relief have a retroactive effect upon results already brought about by conviction.

The prisoner himself may apply for a release through the public procurator or the chief of the prison and this petition *must* be forwarded to the Attorney General. Although a time limitation from the time of the pronouncement of the penalty and the time of presenting the petition has been imposed, the Attorney General may permit the reduction of these periods if the situation warrants an immediate consideration of a petition.

In addition to the Amnesty Act, a deliberative committee for the system of amnesty was established on authority of Article 20 of the Regulations for Enforcement of the Amnesty Law (Minister of Justice Ordinance 78 of 1947).

The committee is designed to assume some of the prerogatives of the procurators who were formerly all-powerful in matters concerning amnesty. The commission investigates and deliberates on matters relating to the Amnesty Law, the Regulations for the Enforcement of the Amnesty Law, coordination of amnesty and parole and revision of the Parole Law, and submits its findings and recommendations in writing to the Cabinet for action.

The committee under the jurisdiction of the Prime Minister, consists of the Attorney General, the Director of the National Public Safety Committee, the Minister of Welfare, the Procurator General, and four men appointed by the Prime Minister.

*Constitution, Art. 73: "The Cabinet in addition to other general administrative functions, shall perform the following functions: . . . . Decide on general amnesty, special amnesty, commutation of punishment, reprieve, and restoration of rights . . . ."

IV. Administration of Justice During the Occupation

1. Establishment of a Constitutional Court System

a. *Interim Supreme Court.* The establishment of a constitutional Supreme Court and of the inferior court system involved a complete revision of the old judicial system and necessitated the original appointment of every judge in Japan, from the President of the Supreme Court down to the most remote Summary Court judge. With the new Constitution coming into effect as of May 3, 1947, and no Cabinet in being to make the necessary appointments before that date, the entire third branch of the Government was in anomalous state. To insure continuity of the law and to prevent a dislocation of the entire machinery of justice, the decision was made to continue the former Supreme Court personnel en masse as an "Interim Supreme Court" until such time as a new Cabinet was formed and the new Supreme Court could be appointed under the Constitution The legal basis for such an interim court was found under Article 103 of the Constitution.

". judges in office on the effective date of this Constitution shall not forfeit their positions automatically unless otherwise provided by law."

This step was at first opposed by officials of the old Ministry of Justice who were reluctant to see the existing Supreme Court panel set up as a Supreme Court outside their power and control even for the interim Their last effort to control the Court was by an extraordinary interpretation of the order for the enforcement of the Court Organization Law whereby, contrary to the legislative meaning and intent, the 32 judges of the old Supreme Court would have been "deemed assigned to the Tokyo high court" as of May 3, 1947, for administrative purposes This brought into the open the tension between the old Supreme Court and the Ministry. Led by the vigorous pleas of President Hosono, a determined faction of the court asserted and won the absolute independence of the judiciary and its freedom from all executive or administrative control even during its interim status This was not a new role for Hosono as he had time and again contested executive encroachments on the judiciary, even to the extent of defying Premier Hideki Tojo at the height of his power

b *Appointments to New Supreme Court* As provided by the Court Organization Law, a Judicial Consultative Appointment Committee for candidates for the Supreme Court was originally selected in April of 1947, with power to deliberate prior to the effective date of the Constitution. The original draft of names for such a committee supplied by the Ministry of Justice called for 11 persons, over half of whom were directly answerable to the Ministry The committee was finally made up of the President of the old Supreme Court, a judge of an inferior court, the President of the old Court of Administrative Litigation, the Vice Minister of Justice, the President of the House of Peers, the Speaker of the House of Representatives, a member of the Imperial Academy, the President of Tokyo Imperial University and the Presidents of the three Tokyo bar associations The committee was to designate at least two candidates for each of the associate judges of the Supreme Court, and at least three for the President or Chief Justice While the personal prestige of the committee was remarkable its effectiveness was not, for in spite of its tremendous responsibility for selecting candidates worthy of the office the committee acted hastily and summarily Apparently acting on political considerations, it proceeded to vote at once, without any discussion of the candidates' qualifications. For President of the Court, they submitted a slate of three persons, two of whom were obviously not acceptable to SCAP, thereby reducing the choice to the candidate favored by the committee from the start.

The result stirred up unfavorable public and official opinion and led to the dissolution of the committee. The personnel of the second Consultative Committee was selected by a nation-wide vote of all judges to select 4 to serve on the committee; a similar election among all lawyers to select 4; the Procurator General was a member; the Prime Minister selected 4 learned men from the universities; and the president of the House of Councillors and the speaker of the House of Representatives were members, completing the total membership of 15 persons.

This committee proceeded more cautiously but under the same Japanese procedure in which discussion and persuasion had no place. Each member submitted a list of persons he considered qualified and the lists were pooled. A total of 139 were nominated and their names published. During the week of publication, 48 persons, among whom were some of the leading legal minds of Japan, requested that their names be withdrawn from consideration. Thereafter the committee again met and, after more voting, submitted 2 names for each of the 14 associate positions on the court and 3 names for the president. This list went to the Cabinet.

Although according to the Constitution, the Cabinet was not bound by the designations of the committee, it apparently felt itself bound by moral obligation and mandate. Thus, three of the judges and two of the lawyers who had served on the Consultative Committee and who had managed to have their names included in the designations were appointed to the Supreme Court. Under these circumstances it was apparent that the members of the new Supreme Court would not necessarily be top-rank judicial personalities.

The appointment procedure delayed the formal establishment of the Supreme Court until November 21, 1947, when the first three cases were tried. In the meantime, it was necessary for the court to select, for submission to the Cabinet, the names of all the candidates for the inferior court positions. Here the court was impeded, not by too wide selection, but by a dearth of available judicial talent. When the drafters of the Court Organization Law set the standards for judicial qualifications they expected that many lawyers and scholars would be available for the new judicial positions. The opposite proved true, for not only did new talent fail to volunteer, but many former judges refused positions under the new court system, preferring the more lucrative fields of private law practice, teaching, and writing. In addition, an average of 30 district court judges were resigning each month due to economic conditions and the pressure of work. As a result, filling the ranks of the inferior court system has been a long and searching process and one which has definitely added to the backlog of cases and inefficient operation of the court system as a whole.

2. Economic Condition of Judges and Procurators

Throughout Anglo-Saxon countries the position of a judge is never made comparable to that of an ordinary government official and provision for salaries is never measured by that pattern. In the United States the salaries of judges are purposely put at a very high level to insure that in the administration of justice, the possibility of corruption, or physical, social or mental discomfort is reduced to a minimum. With the adoption of the new Constitution of Japan, the elevation of the judicial system has been guaranteed and provision is specifically made that judges "shall receive . . . adequate compensation."[22]

The low position and esteem accorded the judges in the past is best reflected in the pitifully inadequate salaries they have received and the official indifference to their official space and housing needs. The procurators have been similarly handicapped.

A survey conducted by the Supreme Court

[22]Appendix C: 21, The Constitution of Japan (Art. 79).

revealed that by the end of 1947 the average judge ran into a monthly excess of expense over income amounting to over 5,000 yen, or 148 percent over his income. This deficit was made up by drawing on savings, selling furniture and personal effects, assistance from relatives, borrowing, and even supplementing the meager income by having to engage in side work. This straightened economic condition inevitably undermined what had once been a high ethical standard and greatly increased the possibility of corruption in the judicial system. In addition, confusion and overwork had resulted from piling up of cases causing many judges to resign from the bench Thus, the difficulty in attracting new personnel with the necessary competence and experience was equalled only by that of holding the good judges who were already in judicial office

Since they were not assured even the minimum necessary for existence the very people charged with interpreting and carrying out the law sometimes found themselves forced to engage in economic transactions of questionable nature Concern over this situation led to proposals by the Supreme Court for remedial legislation, toward which the Supreme Commander displayed a sympathetic attitude, as indicated by the following excerpt from his letter of April 1, 1948, to the President of the Supreme Court

"Thank you so much for the cordial expression contained in your letter of March 29 I believe, as you do, in the establishment of judiciary power as one of the three powers in accordance with the principle of division of powers as expressed in the Japanese Constitution

"In order to insure the independence of the judges in the exercise of their conscience, it is indeed essential that they enjoy the prestige commensurate with their high [illegible] judiciary less than that consistent with decency and comfort "

The Diet, on June 15, 1948, passed legislation which raised the compensation of judges and procurators to levels commensurate with their position

3. Analysis of Attitudes and Particular Cases

In studying the operation of the Japanese judicial system as exemplified by the day-to-day procedure in the conduct of cases in the courts, it is important to remember that the Japanese custom of compromise, in a society so tight and interknit, almost demands the settlement of disputes Settlement by lawsuit and the use of the judicial process is the last possible resort Moreover, the Japanese concept of justice differs widely from the Anglo-Saxon In the American courts, for instance, the province of a judge is to hear the testimony presented by the litigants and witnesses and to determine from all the evidence Japanese judges, however, consider it their duty to interrogate and investigate, determine whether evidence is lacking and if so go out and obtain it Very often a judge will go to the place where the act which is the subject of the controversy or prosecution occurred Trials are delayed over long periods of time, continuations and postponements are granted as a matter of course and the day of judgment is sometimes never reached

A few selected cases will serve to illustrate the practice of multiple public proceedings, judgments characterized by indecision rather than decisions, the relatively impotent way in which specific legal problems are met—all contributing seriously to the slowness with which the judicial machinery moves These cases indicate a strange aloofness and inadequacy of outlook on the part of judges who, wearing "judicial blinders" and showing an inclination to apply the provisions of the law legalistically, betrayed a general failure to grasp the political, ethical, and social significance of the individual cases before them or the practical consequences of their decisions. There was not the slightest evidence that the judges had yielded to bribery, political influence, or intimidation Nevertheless, there has been mounting criticism, not only from Allied observers but among

the Japanese people themselves, of the extreme slowness of judicial processes, and a growing apprehension that political forces were exerting undue influence behind the scenes.

One of the most flagrant cases of defiance of law and abuse of the judicial machinery was that of Kinosuke Ozu, a notorious leader of the Japanese underworld in Tokyo, whose career received attention even in the foreign press. He was alleged to have been involved in every form of intimidation, extortion, and physical violence together with violations of economic regulations. In April 1947 he ran for the Diet on the Liberal ticket but was defeated. He was arrested on June 27, 1947, and indicted on July 3 for crimes of violence. Between that date and September 11, there were 15 public trials. Because of the gravity of the charges, a collegiate body of 3 judges tried the case, prosecuted by two procurators. Three chief defense lawyers and nine other advocates represented Ozu. Four applications for bail were made by the defense on grounds of illness and a pending civil suit, and four additional motions for bail and physical examination of the defendant were made and heard but refused. On September 12, however, the judges released Ozu to Tokyo University Hospital and suspended detention on the basis of a doctor's statement that the defendant was "suffering from headache, stomach catarrh, neurosis, and weakening of his constitution due to the trial." One of the judges even considered it his duty to call on the defendant at the hospital. However, police investigations disclosed flagrant violation of residential restrictions in that Ozu, in company with his lawyers and henchmen, had left the hospital for several hours at a time to visit his old haunts. The pressure of public opinion was so severe that upon application of the procurator the suspension of detention was canceled. The procurator in charge of the case was transferred to an insignificant position elsewhere and three additional charges were brought against Ozu in December 1947 for violation of price control regulations, intimidation, and extortion. Public trials on these charges not begin until April 17, 1948. At the time this report final decision and execution of se ence had only been rendered on the first cri nal case when on June 19, 1948, Ozu was se enced to 8 years and 500,000 yen.

In September 1946, a civil action brought the Tokyo District Court by eleven plaint charged Ozu with illegally occupying land which he had no title or interest, and erecti a market thereon and renting out stalls. February 1947, upon application by Ozu arbitration, the judge appointed an arbitrati committee, which action suspended the ci suit under Japanese procedure. After 13 me ings, the arbitration committee came to a fi agreement in October 1947 and all parties co sidered the matter *settled satisfactorily*. Strang enough, Ozu was given until September 19 to vacate the buildings and in addition one-h of the stall rentals would be paid to Ozu a the other half to the plaintiffs.

Criticism of the handling of the case ce tered around the long delay in proceedings a the questionable method of permitting ar tration in view of the known criminal tacti employed by Ozu in securing the market intimidation and his general reputation as gangster. The court, with its purely technic approach, took the narrow view complete divorced from reality. The case further illu trated the sometimes strange applications the Japanese theory of "compromise" in co sidering a case of this sort "settled satisfacto ily."

The use of bail in Japanese criminal proc dure has been subject to widespread abuse, t leniency with which it is granted to the infl ential accused being particularly objectio able. The reasons given for this practice ar the increase in crimes of grave nature, shor age of personnel, and the lack of facilities f detention. Habitual offenders, ex-convicts a underworld characters have been released bail, resulting in an increase in crimes co mitted by persons out on bail. Release on ba

is often facilitated by "bail lawyers," former judges and procurators who are in a position to use their influence over their old court associates. Such releases are not only discouraging to the policemen who risk their lives to apprehend the criminals (some of whom have sought out and attacked the arresting officers) but undermine the people's confidence in the courts

In December 1947, for example, Kenen Maki, another Tokyo gang boss with political connections and influence, was arrested on charges of extortion and illegal possession of weapons Yet on January 30, 1948, he was released from jail for 11 days because of illness of himself and his wife, and in April he was again released for 20 days so he could assist in turning certain hoarded goods over to the Government The defendant's alleged illness, a Government workers' strike, the reversal of previous testimony by many witnesses for the prosecution, all delayed the trial But at last, on May 10, 1948, the court sentenced Maki to 2½ years' imprisonment

A third prominent case illustrating the use of time-consuming tactics, which would try the patience of any American court but which in Japan are countenanced in matter-of-fact fashion, is that involving Rikizo Hirano, former Cabinet member who, upon being purged from public office by the Japanese Government's screening committee, appealed to the courts The district court, holding that the committee's action was illegal, issued a temporary injunction prohibiting the Prime Minister from enforcing the committee's decision Since the entire purge program, although effected through imperial ordinances and Cabinet orders, was in implementation of a directive of the Supreme Commander, the president of the Supreme Court intervened in the matter and declared that the court in question had exceeded its judicial power and that its decision was null and void and without legal effect. When the criminal court then proceeded to take up the charge that Hirano had falsified his questionnaire under the purge ordinances, his counsel contended that the court lacked jurisdiction to hear the case, twisting the Supreme Court's action on the injunction to suit their contention Counsel even demanded that the court obtain assurance from General Headquarters that any subsequent decision of the court would not be rescinded or overruled through SCAP action These jurisdictional obstructions being overcome after several more hearings and delays, defense counsel then challenged the right of the sitting judge to hear the case, on the ground that he was prejudiced This challenge was overruled, but up to early July 1948 no further progress had been made in trying the case

As an illustration of purely formalistic reasoning without consideration for practicability, the case of Katsumi Kikunami is valuable. Two members of the Elite Masses Party, a rightist political organization, intent on "persuading" Kikunami, a labor leader, against calling a projected strike, called at his house and attacked him with knives, producing serious injuries At the first public trial the court made the following finding

"This case is neither an attempted murder nor a case of political terrorist organizations It is rather a simple case of wounding brought about from indignation . than that they attempted to carry out their point by resorting to violence"

An application by the defense for bail was granted on the ground that there was no evidence of the existence of any of the grounds for detention under the Code of Criminal Procedure It required 11 months and a change of judges to bring the case to final hearing The newly constituted court, however, sentenced the defendants to 10 years' penal servitude, and in a courageous decision, characterized the crime as:

". . manifestation of the feudal idea of violence which runs counter to the freedom of speech and thought guaranteed under the provisions of the new Constitution"

A peculiar practical result of legalistic application and delay in judicial determination is illustrated in the *Aikodo Printing Case.* Following a union pay-hike demand a number of union members occupied the Aikodo Company's

plant in September 1947 and conducted "production control," a Japanese version of the sit-down strike in which the workers assume control of the company and attempt to continue production. The workers were duly arrested, but after their release on bail they immediately reoccupied the plant and continued "production control" until the end of May 1948. The workers not only refused to return the materials deposited in the plant by the company's customers, but in defiance of the company's business policy took and executed new orders and paid the workers' wages out of the profits during the 9-month siege. The court finally held that such a struggle method infringed on the provisions of the new Constitution safeguarding private property and should not be tolerated. Sentences were given for infliction of injuries, breaking into buildings and obstruction of business, ranging from 3 to 6 months in jail—all with 2 years' probation.

One final case should be cited as illustrative of the unusual approach to judicial determination and the length of time it takes to make up the "judicial mind." In the widely publicized lèse-majesté case, the Supreme Court on May 26, 1948 dismissed a *jokoku* appeal from the judgment of the Tokyo high court which had been filed by one Matsushima on June 28, 1947.

The accused, a member of the Communist Party, had participated in the Tokyo food demonstration in May 1946 and had carried a placard written by himself, which read:

"Imperial rescript of Hirohito: The national polity is maintained; we, the Sovereign, are eating our fill; ye, our subjects, be starved and die! The Imperial Signature and Seal."

The procurators considered this act to be disrespectful toward the Emperor and indicted the defendant on the charge of lèse-majesté under Article 74 of the Criminal Code. On November 2, 1946, 1 day before the promulgation of a general amnesty which would have automatically covered this particular case, the Tokyo district court sentenced Matsushima to penal servitude for 8 months, under the general provisions of Article 230 of the Criminal Code covering the crime of libel or defamation.

Both the procurator and the accused appealed to the Tokyo High Court. The case attracted considerable attention inasmuch as it was the first case to raise an issue of infringement upon personal rights and liberties.

During this period, in connection with the discussions between the Government Section and the Japanese lawmakers on the reform of the Criminal Code, the Japanese were already aware that in the view of the Supreme Commander, the retention of the crime of lèse majesté would be an anachronism. In reply to a letter from Prime Minister Yoshida arguing for the retention of the pertinent clauses in the Penal Code, the Supreme Commander in February 1947 had written as follows:

"Dear Mr. Prime Minister: I have carefully considered your letter of December 27 in which you request reconsideration of the instruction conveyed by General Whitney to the Minister of Justice on December 20 that Articles 73 and 75, as well as Articles 74 and 76, of the Penal Code be abrogated. In your letter you submit three reasons for the retention of these articles: First, the position of the Emperor under the new Constitution; second, the position of the imperial family in relation to ordinary individuals; and third, the special provisions which you assert exist in a monarchy such as England for the protection of the King.

"As to your first point, it would appear that to consider an act of violence against the person of the Emperor as of a character subversive of the state would be undesirable and inconsistent with the spirit of the new Constitution. As the symbol of the state and of the unity of the people, the Emperor is entitled to no more and no less legal protection than that accorded to all other citizens of Japan, who, in the aggregate, constitute the state itself. To hold otherwise would violate the fundamental concept, clearly and unequivocally expressed in the new Constitution, that all men are equal before the law, with the necessary implication therefrom that no individual, whatever his position, shall be vouchsafed judicial safeguards denied the ordinary citizen, the ultimate repository of all state authority.

"The respect and affection which the people of Japan have for the Emperor form a sufficient bulwark which need not be bolstered by special provisions in the criminal law implying suzerainty. The former concept of a peculiar Japanese national ethic distinctly differing from universally recognized ethical principles was repudiated by the Emperor himself in his rescript of January 1, 1946, eschewing the myths and legends from which this concept was created.

"As for your second point, I feel that there is even less basis for rationalizing a special position for other members of the imperial family. The elevation of these members to a higher status under the law could only be con-

strued as a discrimination based upon family origin, the essence of which is repugnant to the emergence of a free and democratic society.

[illegible]

Statute of Treasons, ordained prior to representative gov- [illegible]

[illegible] Japan.

"Furthermore, the experience of the United States, where there has never existed any such special safeguards, demonstrates the adequacy of general legislation to punish crimes against even the head of the state In all instances in American history where violence has been attempted or perpetrated against the person of the President of the United States, even though death has resulted, prosecution of offenders has proceeded under no special statute but in accordance with the general law of the State having jurisdiction

"Now that sovereignty is vested in the Japanese people, and as in the United States, there is no other sovereign, retention of Articles 73 and 75 of the Penal Code relating to 'acts of violence against the person of the Sovereign' would be an anachronism It would at once provoke scepticism both among the peoples of the Allied world and the people of Japan as to the good faith embodied in the new concept underlying the constitutional provision for sovereignty

"In view of the fact that the Japanese Penal Code pro- [illegible]

[illegible] by appropriate ordinance "

Sincerely yours,

DOUGLAS MACARTHUR

THE PRIME MINISTER,
Tokyo, Japan

[illegible]

which explicitly emphasizes the right of the individual to freely discuss the Emperor and the Imperial institution.[23] Nor could he be punished for libel since the law allowed prosecution only on complaint of the injured party and in this case no complaint had been made by the Emperor The procurator contended that the sentence of the lower court was improper since lèse-majesté had been covered by the General Amnesty of November 3, 1946. The Tokyo high court, obviously following the procurator's theory, overruled the sentence of the District Court and found that lèse-majesté had been committed, but acquitted the defendant on the basis of amnesty Finally, after 11 months of deliberation, the Supreme Court avoided the important and apparent issue of lèse-majesté in a purely technical ruling based on the consideration that in consequence of the amnesty public action was automatically canceled and no decision as to guilt or innocence could be made

Early in May 1948 the Diet, acting through its Upper House Judicial Committee, and under its constitutional capacity as "the highest organ of state power," initiated an investigation into the conduct and disposition of criminal cases by the courts in general The reason given for such action was that the judges, as in prewar times, were exercising their independent judicial powers from a very narrow, formalistic viewpoint without considering social conditions and implications While not attempting to seek changes in any judgments of the courts, the committee would in flagrant cases, turn over the results of the investigation to the Impeachment Committee Some of the cases aired before the Diet committee have already been referred to At the time of this report the investigation had not been completed, although a large number of witnesses had been called to testify Although argument has been advanced that the committee's action is an infringement on the judiciary, this focusing of public and press attention in the manifold shortcomings of the nation's judicial process has already had a salutary effect Certainly, continuing public ignorance and official condonation of the judiciary's errors and inadequacies could only result in increased incompetence in the courts and endanger the entire administration of justice

[23] Appendix B 23, Removal of Restrictions on Political, Civil, and Religious Liberties, SCAPIN 93, October 4, 1945.

4. Practical Educational Needs

The foregoing factual account has of necessity been candid. The somber picture it presents is relieved, however, by a notable and earnest eagerness of individual judges and procurators to learn and profit from the experience of others.* Actual contact with their situation and discussions with them throughout Japan would impress the most pessimistic observer that there are many men of ability in the judicial system who, given constructive criticism and education, have the capacity to install life into the reforms wrought in the judicial system under the Occupation and realize the goals set by the new Constitution.

The Supreme Court early recognized its responsibility and under the leadership of President Mibuchi brought in key judges from all over Japan for consultation on substantive and procedural matters. As part of its program to build a well-informed judiciary, conversant with the operation of courts in a democracy, the court assigned representatives of the various high and district courts to study specific topics of law. Among the subjects were criminal evidence, justice of peace and police courts, misdemeanors, labor legislation, administrative procedure, contempt of court, rule-making power, anti-trust legislation, and United States Supreme Court decisions regarding unconstitutionality. It was gratifying to see these judges, under severe handicap, poring over the complicated English print, making copious notes and posing interesting and pertinent questions. A prime requirement of the Japanese is access to an adequate, up-to-date working law library, for which constructive plans are now under way.

A most welcome movement would be in the development of visual education and preliminary steps have already been taken in that direction. One of the first was a series of pictorial posters depicting the rights of an accused in a criminal case, such as arrest and detention, public action, right to counsel, search and seizure, and fair trial. These were distributed throughout every court and procurators' buildings in Japan. A series of documentary films on American court procedure and legal research would have a profound effect in accelerating the Japanese judicial machinery.

5. Lawyers and Bar Associations

The relatively insignificant role played by the legal profession in Japanese society, as compared to other countries, is emphasized by the fact that in a population of nearly 80 million people there are only 6,000 lawyers engaged in active practice, while there are only 1,732 judges provided for by the Court Organization Law. Every lawyer must belong to the bar association in the prefecture where he does business which supervises and disciplines him, and he may belong to a national organization.

At the time the second Consultative Committee made recommendations for the new Supreme Court the three Tokyo bar associations, in an interesting experiment, conducted a joint poll as to the qualifications of each candidate. Questionnaires were submitted to the membership which required answers to the following questions:

Do you have sufficient information concerning the candidate to express an enlightened opinion in regard to his qualifications?

Does he possess sufficient academic knowledge and experience?

Is he diligent?

Has he the refinements and good qualities of a judge?

Is he honest and open-minded?

Is he cooperative with his colleagues and a person who takes all the factors into consideration?

Can he exercise painstaking scrutiny and make a fair judgment?

Do his personal habits coincide with the dignity of justice?

Do you have confidence in his character?

Would he tend to be bureaucratic, opinionated, or arbitrary?

*Since the writing of this report encouragement is found in the fact that the Supreme Court, for the first time in the history of Japan, exercised its novel power of constitutional review in voiding the judgment of a lower court on the grounds that it was based on inadmissable evidence, namely on a confession made after prolonged detention.

> Would he participate in activities which tend to degrade the qualifications of a judge?
> Do you reserve any doubt as to his qualifications as a judge of the Supreme Court of Japan?

The results of the survey were not made public, but the committee in charge did submit to the Cabinet for its consideration in determining the Supreme Court appointments tabulations of the answers received.

At the present time there is considerable conflict of opinion as to the jurisdiction over admission to and the right to practice law In the past, the former Ministry of Justice exercised that function under the Law for Lawyers and some pressure exists to carry the function over into the office of the Attorney General The Supreme Court, however, sponsors the idea that the study of law, preparation for admission to the bar, and disciplinary control of the legal profession are inherent powers of the highest court of justice of the state, corollary to the jurisdiction over the rules of the court which it enjoys under the Constitution Between these two views, there is that held by the bar associations that lawyers should be able to legislate the practice of law exclusively through the associations

6. Civil Liberties Union

While in the past there had been sporadic civil liberties movements among labor farmer parties and lawyer groups, the first such movement to be organized on a country-wide basis was the Japanese Civil Liberties Union Sparked by the initiative of the bar association and a timely visit by Mr Roger N Baldwin, secretary-general of the American Civil Liberties Union, a preparatory committee met in Tokyo in May 1947 and organized the Civil Liberties Union of Japan which held its inaugural meeting on November 23, 1947. The first branch of the union was established in Kyoto in February 1948 and since then other branches have been set up in all principal parts of the country. The union functions through five permanent standing committees—investigation, information, legal, public relations, and finance Other temporary committees are those for investigation of the new police system, protection of personal rights, and criminal proceedings The beneficial effect of the union was felt early and much has been done in connection with public safety commissions, the new civil and criminal codes, domestic relations, labor standards, women, and juvenile bureaus Following the example of other democratic nations which maintain agencies to protect the rights of their citizens, the Japanese Government under the new Constitution has established a Civil Liberties Bureau within the Attorney General's Office

The first of their kind in Japan, the Bureau and the Union are confronted with more than the usual difficulties, for with all the advances toward democracy and freedom achieved under the Occupation, it is only natural that time and practice in the use of democratic devices will be required to make them fully a part of the daily thinking and habits of the people As Mr. Shinkichi Unno, the director general of the union points out in the *Nippon Times*

> .. the insular spirit, fostered by the seclusion policy pursued for several centuries past, and the feudalistic habit of mind ingrained by as long years of feudalistic government, cannot be wiped out by a mere revision of laws

V. Conclusion

The reform of Japan's judicial and legal system was an undertaking of monumental scope Some of the laws were but norms used by a hierarchial government to minimize the rights

and powers of the people and maximize its own. To free the Japanese people from the shackles of authoritarianism required a thorough-going change of the legal foundations on which the system was based. The time available for the accomplishment of this task was brief. So brief, indeed, that some errors, oversights, or deliberate omissions were inevitable. Yet such was the situation that delay or inaction pending attainment of perfect solutions were inadmissible. The decisive question was to what extent and in what fashion the laws had to be revised.

Of primary interest in determining the scope of revision were the political aspects of the basic codes for these had a direct bearing on Occupation objectives. The fundamental rights of the people had to be protected, interference by the state in the life of the individual must be restricted to the minimum necessary for the public welfare, and complete equality before the law had to be established. To enable the courts to apply the new Constitution and the implementing legislation impartially and courageously, the judiciary must be transformed into a truly independent branch of the Government. These political objectives did not include the improvement of other features of the Japanese legal system, such as awkward legislative technique, unreasonable complexity, and sometimes strange economic theories. Consequently, the first three books of the Civil Code, for instance, which deal with general provisions, property and obligations, remained virtually unchanged, and no over-all revision of the Commercial Code was attempted, however useful that would have been from a professional point of view. That the Occupation felt responsible for only certain reforms did not, however, prevent Japanese drafters of the legislation from using the opportunity to effect additional improvements advocated for a long time.

Of equal importance with the substance of the revisions was the method by which they were brought about. Even within the limitation of Occupation objective the principle applied was that no particular piece of legislation should be categorically required or dictated, for it was firmly believed that new legal institutions, if imposed by fiat of the conqueror, would be short-lived. Actually not a single formal directive was issued to the Japanese Government concerning the revisions of the codes. The desired ends were arrived at through informal conferences featuring suggestions, exchange of ideas, advice and persuasion. In the continuous contacts between the American and Japanese jurists a mutual understanding of the two different legal systems developed which proved extremely helpful for the final solution of the complicated problems involved. The Japanese were eager to know what the American law provided in certain cases, and frequently expressed the desire to adopt similar devices. Sometimes they had even to be discouraged from doing so because the intended reform did not fit into the Japanese legal system. In the field of jurisprudence, the only successful method of persuading others is through constant personal contact, discussion, and argument. Even in an occupied country, this method, if genuinely applied, makes the representative of the occupied state forget the fact of occupation so that he looks at the discussion partner as a kind of colleague with whom he has in common an interesting assignment.

While many legal reforms were thus inspired by SCAP, they were not ordered, and this very fact may justify a certain optimism with regard to their post-Occupation survival. It would be erroneous to assume that they will not last merely because of their connection with the Occupation. History teaches that lasting effects were brought about on nations by contacts with the civilization of other countries. The example of Napoleon I may be recalled who, as a pioneer of the ideas of the French Revolution, greatly influenced the political pattern in the European countries which he conquered and occupied. The opinion may be ventured that America, the nation primarily

responsible for the occupation of Japan, is the last powerful citadel of the democratic forces in their struggle with totalitarianism whether of the left or of the right. In endeavoring to impress the Japanese people with the ideals of democracy, persuasion, not force, was the instrument, and those ideals have not yet lost their persuasive power.

To rule out altogether the possibility that some time after the Allied Occupation the Japanese will discard as alien and obnoxious all the new concepts which they have accepted with such apparent eagerness and understanding would be self-deception It is, of course, within the realm of possibility that the laws might be abolished, bypassed or conveniently misinterpreted It would be idle to deny that among certain reactionary elements such an eventuality would be heartily received, and it may even be expected that a tendency in that direction may actually develop as a temporary reaction immediately following the Occupation The extent of such a reaction, if it does occur, will in part depend upon how well the courts will interpret the laws in the spirit of the new Constitution. The younger generation of judges promises to live up to this historic task. However that may be, it will be difficult to turn the clock back and actually deprive the people of the rights newly won by legislation The individual safeguards guaranteed by laws such as the revised Code of Criminal Procedure and the Habeas Corpus Act should not be looked upon even now as mere paper stipulations in statute or code textbooks, for there are vital and powerful social forces at work in their activation The working classes, organized in new social movements, are beginning to grasp the significance of the reforms for the betterment of the life and happiness of the common man Japanese women, suppressed for centuries, have come to appreciate the opportunities opened to them in consequence of the abolition of the old house system and the implementation by law of the principle of equality of sexes. They are becoming increasingly aware of their new legal status and, in their own interest, may be expected to strive to integrate it into the actual customs of society Liberty once enjoyed is not readily given up

SECTION VII

Civil Service

I. Early Phase

1. Why Reform Was Necessary

Were the reform of the Japanese civil service entirely a matter of introducing modern principles of scientific personnel management into the Japanese government in the interest of efficient governmental administration, it might well be hailed as a great service to Japan but its relationship to the Potsdam Declaration, to the purpose of the Allied Occupation or to the functions of SCAP's Government Section might be difficult to perceive. Such relationship at once becomes apparent, however, when it is considered that a successful reformation of the Japanese civil service will not only enhance governmental efficiency but will break up one of the ruling cliques of presurrender Japan—the tightly knit, exclusive and self-perpetuating bureaucracy which exercised the powers of government over the people in the feudal concept of dynastic rule by divine right—and will substitute therefor a body of democratically selected officials who will administer the laws in the concept of service to the people.

Before the Occupation it was recognized by Japanese as well as Western students that the Japanese bureaucracy was a key instrument in the totalitarian regimentation of the people's life. The attitude of the members of the bureaucracy toward the public, to whom they felt little obligation, was one of pride and arrogance. In their official acts they spoke for the Emperor; the public's role was but to obey. Protected as it was by police vigilance, this authority went unchallenged. As the government multiplied and tightened its controls over political, social and economic activities, the nation's dependence on the administrative decisions of government officials increased and so did the power of the bureaucracy. Undemocratic by composition and conviction, the bureaucracy was a natural ally of both the militarists and the Zaibatsu, a ready, willing and effective instrument for carrying out the policies of those groups.

The decision to utilize the existing Japanese governmental machinery to effect the Occupation's purposes inevitably involved the risk that idealogically hostile bureaucrats would by administrative sabotage nullify Occupation policies or the programs of Japanese political leaders evolved pursuant thereto. To guard against this risk required constant vigilance and surveillance. To some extent the risk was reduced by the removal of identifiable militarists and ultranationalists from public life, and the enhancement of the power, prestige and effectiveness of the Diet to make it truly "the

highest organ of state power" created within Japan a force which could most successfully bring the bureaucracy under democratic control. Since the bureaucracy would outlast the Occupation, however, a fundamental reform of the system was early recognized as necessary

2. Early Steps

While reform was recognized as necessary, it was also recognized that an institution so pervasive and so firmly established as the Japanese bureaucracy could not be reformed by summary measures, that superficial tinkering would produce only superficial results Existing studies on the Japanese civil service were scanty The first requirement was a survey of the scope of the problem itself This was undertaken in November 1945 concurrently with the Section's studies of the organizational structure of the Government

These early inquiries, conducted by the Government Section with the collaboration of officers of other SCAP staff sections interested in the Japanese Government personnel administration from the points of view of their respective functional responsibilities, yielded much valuable information on such features of the civil service as. legal basis, organization and procedures; recruitment, examination, placement and promotion of all ranks, classification of positions and individuals, pay, allowances and bonuses, retirement and welfare provisions; training, pre-service and in-service, sources of personnel; morale, attitudes toward the public and toward their offices, discipline, tenure, employee rights. This information came from government officials, university professors and other sources In the process, the Government Section found a few informed individuals who were aware of the existing system's shortcomings and who would welcome changes Some concrete proposals for reform were submitted by Japanese experts

It soon became apparent that basic reform would require the continuing efforts of a sizable staff of experts to make the studies and develop the recommendations for reform legislation and to supervise its implementation. No such body of experts being available in the Government Section,* or for that matter, in General Headquarters, the Government Section in January 1946 considered initiating a formal SCAP memorandum directing the Japanese Government to appoint a special commission of experts to draft proposals for basic reform of civil service system under SCAP guidance pursuant to standards to be set up by SCAP [1] This proposal was set aside, however, in favor of inducing the Japanese by suggestion to initiate the necessary action in the interest of more efficient government.

3. Bureaucratic Reaction

In February 1946 the Cabinet Bureau of Legislation, which at that time handled government personnel policy matters at Cabinet level, submitted to the Government Section for approval a plan for the "reform" of the civil service whose main constituents were some simplification of the hopelessly complicated pay and allowance scales, modification of the elaborate system of personal ranks, changes in the content of the higher civil service examination and the establishment of three categories of classifications The Bureau's representatives were sufficiently candid to admit that the plan made no fundamental changes, but claimed that it represented an initial break in the traditional system and was a forerunner of more basic changes. It was obviously an effort to soften the impact of the Government Section's interest in the civil service field and to appease vigorous newspaper criticisms of bureaucratic abuses which were then making their appearance.

The plan was cleared by the Government

[1] Appendix B 8a, Memo for Chief, Government Section, January 30, 1946 'Japanese Civil Service Reform '

*Only one member of the Government Section, Lt Milton J Esman, AUS, was engaged in this task at the time

Section as nonobjectionable and a "step in the right direction" with the reservation that it could in no way be considered to take the place of fundamental reforms considered desirable. The plan was adopted in April 1946.

In other sections of this report it has been noted that the Cabinet Bureau of Legislation occupied a strategic position in the Japanese governmental machinery and that it frequently used this position to influence not only the legal form but the substance of Government-sponsored legislation, thus shaping national policies with the least amount of responsibility to the people's representatives in the Diet.* Since the top officials of the Bureau included some of the leading lights of the Japanese bureaucracy—all of them skilled practitioners and staunch exponents of legalistic formalism in government—such influence was invariably reactionary. Naturally the Bureau's response to the Government Section's suggestion was not such as to arouse sanguine expectations of substantial reforms on the government's initiative.

4. Japanese Government's Request for Assistance

In April 1946 the Government Section again had under consideration a proposal, concurred in by five other interested staff sections of GHQ, to initiate a formal SCAP directive on civil service reform. The use of a directive at that stage of the Occupation would have been a departure from the technique of leadership as opposed to direction employed by the Government Section beginning about March 1946. At this critical point the cause of civil service reform received unexpected support within the Japanese Government in such form as to bring about decisive action. On May 3, 1946 the Minister of Finance personally submitted to an official of the Finance Division of SCAP's Economic and Scientific Section a letter requesting that a commission of American experts be invited to study the Japanese civil service and draft a plan for the "fundamental and thoroughgoing revision of the salary and allowance system in conformity with a position classification plan based on American experience." This letter was entirely unsolicited and unexpected, although it may have been stimulated by a brief description of the American classification system presented by the Labor Advisory Mission to SCAP which was in Tokyo at that time. The letter was forwarded to the Government Section for appropriate staff action.

Inquiry disclosed that the Bureau of Legislation had not been informed of the Finance Minister's letter. Because of its stubborn resistance to fundamental civil service reform, the Bureau found the letter embarrassing. Its officials considered it a tricky and irresponsible violation of their jurisdiction by the Finance Ministry's Bureau of the Budget, which had advocated a more scientific approach to the personnel classification and pay and allowance systems than the conservative Bureau of Legislation was willing to accept. This intragovernment discord was aired at a Cabinet meeting on May 14, 1946. The Minister of Finance relieved the tension by apologizing to the director of the Bureau of Legislation for his haste, but not until he had prevailed on his Cabinet colleagues to support the request contained in his letter. This support was evidenced in an "understanding" reached by the Cabinet on May 14, 1946, of which slightly different versions—similar, however, in substance—were submitted to Government Section by the Cabinet Bureau of Legislation and the Ministry of Finance.[2]

The Japanese Government was now officially on record as requesting, with complete Cabinet accord, the assistance of a mission of American experts to study and draft plans for a fundamental reform of its civil service system. True the Japanese request was motivated by a desire

[2]Appendix B: 8b, Correspondence from Japanese Government Regarding Request for Civil Service Mission.

*Section III, The New Constitution of Japan; and section V, The National Diet.

for higher efficiency and morale, while the Occupation's basic aim was democratization There was a risk that the Japanese might attempt by adopting limited reforms in position classification and compensation to avoid a fundamental democratic recasting of their feudal bureaucratic system. To offset this risk, however, was the great advantage of initiating the operation on the basis of a voluntary request of the Japanese Government, the likelihood that as one result of the mission's efforts there would be created a group of Japanese converts to a modern and democratic civil service system, and the possibility of winning sufficient support among influential Japanese to gain voluntary institution of an adequate reform program. The advantage of Japanese sponsorship was deemed of sufficient value to warrant granting the Government's request Accordingly, on the recommendation of the Government Section, the Supreme Commander transmitted the Japanese Government's request to the War Department with request for favorable consideration

II. The United States Personnel Advisory Mission

In response to the Japanese Government's request, approved by General MacArthur, the United States Personnel Advisory Mission to Japan was constituted by the War Department and sent to Japan in November 1946 *

The object of the Mission was to study the personnel system of the Government of Japan, including all laws, policies, practices and procedures through which personnel operations were carried out, and on the basis of its findings to make recommendations designed to effect improvement in the over-all personnel administration of the Japanese Government

Arriving in Tokyo on November 30, 1946, *the Mission set about orienting itself to the* situation then existing in Japanese public administration. This orientation started with a conference with General Whitney, Chief of the Government Section, in which General Whitney summarized the fundamental problems, policies, and accomplishments of the Occupation. The use of the administrative facilities of the Government Section was accorded to the Mission and the Mission was invited to draw freely on the accumulated experience and information of the Section's staff and files

With the cooperation of members of the staff of General Headquarters, a series of lectures and question periods was scheduled which gave the Mission an organized review of Japanese history, Occupation policies, the organization of the national government, the organization of the local governments, the political parties, the judiciary, labor problems and the Japanese character and psychology

The Mission also made a study of information in the files of General Headquarters dealing with personnel administration in the Japanese Government For many months prior to the arrival of the Mission in Japan, members *of the Government Section staff had made* studies of Japanese personnel practices These studies, while not in all cases exhaustive, were fairly well documented and exceedingly helpful in portraying significant conditions, and useful in determining the Mission's approach to the major problems presented

Following these preliminary studies, the Mission opened conversations with the representatives of the Japanese Government That government had, on October 26, 1946, by Imperial Ordinance, established an Administra-

*Mr Blaine Hoover, President, Civil Service Assembly of the United States and Canada, was appointed Chairman of the Mission The other members were Mr Manlio F DeAngelis, Chief, Program Planning Staff, United States Civil Service Commission, Mr Robert S Hare, Chief, Field Classification, United States Civil Service Commission, and Mr W. Pierce MacCoy, Director of Personnel, United States Department of State

Section as nonobjectionable and a "step in the right direction" with the reservation that it could in no way be considered to take the place of fundamental reforms considered desirable. The plan was adopted in April 1946.

In other sections of this report it has been noted that the Cabinet Bureau of Legislation occupied a strategic position in the Japanese governmental machinery and that it frequently used this position to influence not only the legal form but the substance of Government-sponsored legislation, thus shaping national policies with the least amount of responsibility to the people's representatives in the Diet.* Since the top officials of the Bureau included some of the leading lights of the Japanese bureaucracy—all of them skilled practitioners and staunch exponents of legalistic formalism in government—such influence was invariably reactionary. Naturally the Bureau's response to the Government Section's suggestion was not such as to arouse sanguine expectations of substantial reforms on the government's initiative.

4. Japanese Government's Request for Assistance

In April 1946 the Government Section again had under consideration a proposal, concurred in by five other interested staff sections of GHQ, to initiate a formal SCAP directive on civil service reform. The use of a directive at that stage of the Occupation would have been a departure from the technique of leadership as opposed to direction employed by the Government Section beginning about March 1946. At this critical point the cause of civil service reform received unexpected support within the Japanese Government in such form as to bring about decisive action. On May 3, 1946 the Minister of Finance personally submitted to an official of the Finance Division of SCAP's Economic and Scientific Section a letter requesting that a commission of American experts be invited to study the Japanese civil service and draft a plan for the "fundamental and thoroughgoing revision of the salary and allowance system in conformity with a position classification plan based on American experience." This letter was entirely unsolicited and unexpected, although it may have been stimulated by a brief description of the American classification system presented by the Labor Advisory Mission to SCAP which was in Tokyo at that time. The letter was forwarded to the Government Section for appropriate staff action.

Inquiry disclosed that the Bureau of Legislation had not been informed of the Finance Minister's letter. Because of its stubborn resistance to fundamental civil service reform, the Bureau found the letter embarrassing. Its officials considered it a tricky and irresponsible violation of their jurisdiction by the Finance Ministry's Bureau of the Budget, which had advocated a more scientific approach to the personnel classification and pay and allowance systems than the conservative Bureau of Legislation was willing to accept. This intragovernment discord was aired at a Cabinet meeting on May 14, 1946. The Minister of Finance relieved the tension by apologizing to the director of the Bureau of Legislation for his haste, but not until he had prevailed on his Cabinet colleagues to support the request contained in his letter. This support was evidenced in an "understanding" reached by the Cabinet on May 14, 1946, of which slightly different versions—similar, however, in substance—were submitted to Government Section by the Cabinet Bureau of Legislation and the Ministry of Finance.[2]

The Japanese Government was now officially on record as requesting, with complete Cabinet accord, the assistance of a mission of American experts to study and draft plans for a fundamental reform of its civil service system. True the Japanese request was motivated by a desire

[2]Appendix B: 8b, Correspondence from Japanese Government Regarding Request for Civil Service Mission.

*Section III, The New Constitution of Japan; and section V, The National Diet.

for higher efficiency and morale, while the Occupation's basic aim was democratization. There was a risk that the Japanese might attempt by adopting limited reforms in position classification and compensation to avoid a fundamental democratic recasting of their feudal bureaucratic system To offset this risk, however, was the great advantage of initiating the operation on the basis of a voluntary request of the Japanese Government, the likelihood that as one result of the mission's efforts there would be created a group of Japanese converts to a modern and democratic civil service system, and the possibility of winning sufficient support among influential Japanese to gain voluntary institution of an adequate reform program The advantage of Japanese sponsorship was deemed of sufficient value to warrant granting the Government's request Accordingly, on the recommendation of the Government Section, the Supreme Commander transmitted the Japanese Government's request to the War Department with request for favorable consideration

II. The United States Personnel Advisory Mission

In response to the Japanese Government's request, approved by General MacArthur, the United States Personnel Advisory Mission to Japan was constituted by the War Department and sent to Japan in November 1946 *

The object of the Mission was to study the personnel system of the Government of Japan, including all laws, policies, practices and procedures through which personnel operations were carried out, and on the basis of its findings to make recommendations designed to effect improvement in the over-all personnel administration of the Japanese Government

Arriving in Tokyo on November 30, 1946, the Mission set about orienting itself to the situation then existing in Japanese public administration This orientation started with a conference with General Whitney, Chief of the Government Section, in which General Whitney summarized the fundamental problems, policies, and accomplishments of the Occupation The use of the administrative facilities of the Government Section was accorded to the Mission and the Mission was invited to draw freely on the accumulated experience and information of the Section's staff and files

With the cooperation of members of the staff of General Headquarters, a series of lectures and question periods was scheduled which gave the Mission an organized review of Japanese history, Occupation policies, the organization of the national government, the organization of the local governments, the political parties, the judiciary, labor problems and the Japanese character and psychology.

The Mission also made a study of information in the files of General Headquarters dealing with personnel administration in the Japanese Government. For many months prior to the arrival of the Mission in Japan, members of the Government Section staff had made studies of Japanese personnel practices These studies, while not in all cases [illegible], were fairly well documented and [illegible] helpful in portraying significant [illegible] and useful in determining the Mission's approach to the major problems presented.

Following these [illegible] the Mission opened [illegible] with the representatives of the Japanese Government The government [illegible] Imperial Ordinance [illegible]

*Mr Blaine Hoover President, Civil Service Assembly of the United States and Canada, was [illegible] members were Mr Manlio F De Angelis, Chief, Program Planning Staff, United States Civil Service Commission, [illegible] Classification, United States Civil Service Commission, and Mr. W. Pierce MacCoy, [illegible]

tive Research Bureau. The Administrative Research Bureau, under the jurisdiction of the Prime Minister, was authorized to conduct investigations, do research, and formulate plans for the reformation of the organization, the personnel system, and the administrative procedures of the Japanese Government. Organized conferences between the Mission and the President and Division Directors of Staff of the Administrative Research Bureau were instituted December 24, 1946.

The work of the Mission and the Bureau was integrated and for technical purposes decentralized. Committees under the advisorship of the Mission members and including Division Directors of the Administrative Research Bureau were set up to conduct investigation in designated areas of personnel administration within the Japanese Government. These committees immediately launched their programs.

A general committee was established to receive and consider reports of the advisors to the special committees and on the basis of such reports to (1) promote progress of the work of the special committees, (2) coordinate work of the special committees and (3) consider major problems developed by the special committees.

The first meetings of each of the special committees were devoted to the clarification of basic concepts of merit system administration. Although a great many of the concepts had no counterpart in Japanese experience, the committees quickly grasped the basic ideas and terms pertaining to their special study areas. These preliminary group discussions, although primarily devoted to the explanation of basic principles, were of great benefit to the Mission as well as to the Japanese committee members. Through the exchange of ideas, the Mission members, acting as committee advisors, gained valuable insight into the practices and attitudes prevailing in those areas of Japanese public administration in the particular areas of personnel administration under study.

Accordingly, the Mission entered the new year having (1) informed itself as well as possible, within the limitation of time, concerning the broad aspects of the Japanese governmental situation, (2) reviewed the studies previously made of personnel administration in the Japanese Government, (3) established relations with the Japanese officials as a basis for work, and (4) launched a series of special studies.

The Mission through its special committee on position classification and pay, had meanwhile, set the Administrative Research Bureau to work on a limited position classification survey. Although relatively few positions were involved, the survey was designed to include positions in each of the more important ministries and agencies of the National Government and to cover as wide a variety of classes of employment as possible.

The objectives of this "pilot" position classification survey were threefold:

1. To secure specific detailed information as to the relationship of pay to the duties performed among the various classes of employment in the Japanese Government.

2. To develop effective methods of making position classification surveys in the Japanese Government and to try them out.

3. To develop and train a staff of Japanese technicians which, with the benefit of outside technical advice, would be competent to assist in carrying out position classification activities.

The survey was launched in March 1947. It was an undertaking of special interest and significance and required the utmost in tact of execution. The Japanese government service had never based its personnel administration on the relative evaluation and classification of the duties and responsibilities of positions, but had conducted personnel assignments and transactions according to a rigid, complex system of assigning official rank to individual persons without particular reference to their posts of duty.

The findings of the special committees were,

quite generally, negative That is, the Japanese counterparts of many of the key elements of a modern personnel program were either lacking, or were based on tenets and traditions inefficient and entirely foreign to democratic principles of public personnel administration The administration of Japan was found to be particularly weak in the program areas of recruitment, including examination, compensation, position classification, employee utilization and evaluation, recreation and retirement There was inadequate provision for the maintenance of discipline and the equitable treatment of employees On the other hand, in the areas of personal training, health and welfare, Japanese administrators had gained some experience, which, though neither consistent on a service-wide basis nor modern in conception, could be utilized in building a modern personnel program.

In general it was apparent that the bureaucracy through which the former imperial government had operated was still firmly entrenched and had not essentially changed its allegiance to feudalistic methods and principles of operation

Effective progress had already been made by the Occupation authorities in eliminating from positions of influence persons whose previous military, political and economic activities and associations had demonstrated their lack of sympathy with Japan's efforts to democratize her institutions

Of no lesser degree of danger to the successful democratization of Japan's institutions of public administration were the vast majority of old-line Japanese bureaucrats. To have allowed these officials to perpetuate themselves and their like-minded subordinates in power would have meant the courting of continuous attempts to sabotage principles of efficiency and merit in public administration

The United States Personnel Advisory Mission to Japan recognized and accepted its share of responsibility for breaking up this clique of reactionary bureaucrats The approach taken by the Mission was to create, by the legislative enactment of a national public service law, such standards of merit and equitable treatment in public personnel administration that, with few exceptions, old-line officials of the predemocratic Japanese bureaucracy would be forced out of their posts At the same time application of the same standards for civil service administration would enable the selection and appointment of objectively qualified replacements.

It was not envisaged that the Government of Japan should attempt any single system of personnel administration in its entirety simply because such a system had elsewhere operated successfully. Neither did the Mission assume that certain personnel administrative activities were to be regarded as unsuited to Japan simply because Japan was not currently utilizing them Such an assumption would have been fatal to progress anywhere The Mission went on the assumption rather, in its approach to drafting a program of public personnel administration for Japan, that the collective experience in the development of public personnel administration in jurisdictions having progressive democratic institutions of government had shown the worth of certain services and techniques. In this connection the Mission gave special attention to recruitment, training, position-classification, compensation, employee evaluation, health, safety, welfare, recreation, employee relations, retirement and employment statistics. The analysis of the Japanese situation was made in terms of these techniques and services However, the interest was not in form or terminology, but rather in assuring the existence of administrative devices of [illegible] adequate to produce the results which [illegible] familiar services are designed to obtain

In drafting a constructive [illegible] objectives of general [illegible] in mind and should be [illegible]

Adequacy. Any proposed [illegible] nel administration [illegible] the nation and lay a [illegible] broad, strong and [illegible]

tailed specification considered by the Mission to have been essential was omitted as well as several crucial substantive and administrative provisions.

One such provision which was omitted in the enactment of the law was the prohibition of employees in the government service from engaging in strikes or other forms of concerted work stoppage which would be detrimental to the conduct of governmental activities. The law as enacted applied to less than one-fourth of the employees of the government. Another provision which was omitted from the law would have given the National Personnel Commission special status similar to that enjoyed by the Japanese Board of Audit in the presentation of its annual operating budget for Diet approval. This provision had been deemed necessary in order to prevent possible financial sabotage of the National Personnel Commission's program by the budget authority of the Government of Japan which is located organizationally in the Finance Ministry and is thus subordinate to the administrative direction of the Minister of Finance.

The name of the central personnel agency which was to be set up under the National Public Service Law was to have been the National Personnel Authority. As the law was enacted, the name of the central personnel agency was changed to the National Personnel Commission. The term "commission" had been intentionally avoided by the Mission in selecting a name for the personnel agency since the character used by the Japanese to express "commission" is also understood by them to mean "committee" and to characterize numerous administrative bodies often unimportant and of a relatively temporary nature.

The United States Personnel Advisory Mission to Japan had included carefully phrased specifications as to the qualifications of, and the division of responsibilities among, the Commissioners of the National Personnel Commission and its chairman. Justifiably high and necessarily specific qualifications had been set forth as a basis for the selection of the Commissioners by the Cabinet. These qualifications were largely omitted in the law as it was passed by the Diet. The Mission had intended that there should be vested in the chairman of the National Personnel Commission considerable executive responsibility in order that the commonly observed weakness in administrative decisiveness of a three-man commission might be, to a great extent, avoided. None of this type of executive responsibility was given to the president in the law as passed.

The entire law had been rewritten in such a manner as to make the Commission entirely responsible to the whims of the Prime Minister. Under these changes the Commission could not, without the approval and sanction of the Prime Minister, issue rules to implement the law or change existing rules; could not make recommendations to the Diet concerning the pay schedules or confer with members of that body; could not issue orders or directives to facilitate the performance of its legally authorized functions; could not inaugurate new fields of personnel studies; could not initiate disciplinary action of high ranking officials. In the field of disciplinary action on high ranking government officials, the Commission was restricted to merely investigating the matter and making recommendations to the Prime Minister. The cumulative effect of these weaknesses made the law a feeble instrument, and important revisions in it would have to be made before it could be relied upon to effect a democratization of the well entrenched feudal bureaucracy of Japan.

By January 1, 1948, the staffing of the division was substantial and its recently recruited members of staff had received brief and intensive but quite comprehensive orientation in the organization and functions of public administration in Japan. Accordingly, a schedule of operations for the Division was put into effect with the beginning of the new year. Relative priorities among the scheduled projects were determined with reference to July 1, 1948, this being the date after which all provisions of the

National Public Service Law would come into force, subject to the discretion of the National Personnel Commission and the Commission's readiness to implement them.

KEY TO SCHEDULE OF OPERATIONS

		Date
A		Jan. 2 to Jan 30.
B		Jan. 7 to Feb. 9.
C		Jan. 2 to Mar 15
D		Jan 2 to Jan. 31
E		Jan 2 to Feb 9
F		Jan 2 to Jan 31.
G	Organize functions of National Personnel Commission	Feb 10 to Feb 28.
H	Identify "critical" positions Japanese Civil Service (for examination)	Feb. 9 to May 31
I	Assemble material examinations critical administrative positions	Feb 1 to Apr 27.
J	Train interpreters on special technical vocabulary	Jan 19 to Jan 31
K	Draft program to promote prestige National Personnel Commission	Mar 15 to Mar 22.
L	Organize offices of National Personnel Commission	Mar 1 to Mar 15.
M	Initiate general classification study Japanese Civil Service	June 1 to June 30
N	Select Ministry personnel officers for special instruction	Apr 27 to May 15
O	Train staff National Personnel Commission	Feb 2 to May 15
P	Review annual budget of National Personnel Commission	Mar 15 to Mar 22
Q	Set up rules of National Personnel Commission	Mar 15 to May 15.
R		June 1 to June 30
S		May 17 to May 31
T		May 17 to June 30
U		Mar 22 to Mar 30
V		May 17 to May 29.
W	Initiate development of examinations "critical" positions Japanese Civil Service	June 1 to June 30.
X	Study critically and report to date overall progress Civil Service Division Program	Mar. 31 to Apr 30.
Y	Organize staff functions and offices Ministry Personnel Offices	May 31 to June 23
Z	Construct schedule of operations permanent NPC period beginning 7/1/48	June 23 to June 30.

CIVIL SERVICE DIVISION, GOVERNMENT SECTION

SCHEDULE OF OPERATIONS

JANUARY 1 TO JUNE 30, 1948

JAN FEB MAR APR MAY JUNE

1 3 10 17 24 31 7 14 21 28 6 13 20 27 3 10 17 24 1 8 15 22 29 5 12 19 26 30

GENERAL PERSONNEL ADMINISTRATION BRANCH: F, C, K, P, U, X, RES

ORGANIZATION BRANCH: B, G, L, Q, V, Y, Z

CLASSIFICATION AND COMPENSATION BRANCH: E, H, R, M

EXAMINATION BRANCH: A, I, N, S, W

TRAINING BRANCH: D, J, O, T

Each project, whether of an administrative or managerial or program nature, presented peculiar and difficult aspects which had to be allowed for in the over-all timing and coordination of the program of operations. Characteristic of many of the projects was the desirability and the practical necessity of closely coordinating and collaborating with the staff of the Temporary National Personnel Commission, and frequently through the Commission's offices, with officials of other agencies of the Japanese Government. Having to accomplish certain portions and stages of projects by so-to-speak "remote control" characterized by a major language difficulty, has not infrequently led to unforseeable delays in project completion, in spite of the planning and effort of all concerned. Another factor in the progress of the division's schedules of operation was the change of Cabinet in the spring of 1948 with its attendant uncertainties of governmental program and policy.

One of the first major projects of the division was to clarify the organizational structure of the upper levels of the Japanese civil service. Surprising though it may seem to one accustomed to the American practice of charting organizations and work operations, the Japanese had not, prior to the Occupation, attempted to chart their vast and complex organizations of government. There was, therefore, great need on the part of the Civil Service Division for a chart showing the organizational and functional relationship of the various Japanese Ministries and other administrative agencies to each other, to the Prime Minister and Cabinet, and to the Judiciary and Legislative Branches of the Government. Early completion of this project was essential, since it formed the basis for such other projects as the identification of critical positions for examination and classification purposes.

Progress on this project was piecemeal and at times slow, due to the scattered sources of data which had to be utilized and the need for accuracy. Although members of the staff of the Temporary National Personnel Commission cooperated in the gathering and checking of organizational information, they also were faced with the problem of digging necessary data out of unindexed official documents, and facts from officials whose concepts of organization were often vague.

While the urgent charting and description of the functions of all of the major administrative organizations and their principal subdivisions has long since been completed, this work cannot be considered closed. The rapidly changing national needs of postwar reconstruction and rehabilitation appear not infrequently to necessitate changes in both "old line" and temporary administrative functions with corresponding changes in the organizational structure of the Government.

In May 1948 the Civil Service Division was charged with a new responsibility. The drafting of a proposed merit system of personnel administration in locally autonomous governmental bodies such as prefectures, cities and towns, constitute one of the division's most significant and interesting projects. Clear-cut local autonomy in Japanese administration was virtually nonexistent prior to the enactment by the Japanese Diet in 1947 of the Local Autonomy Law. Such local self-determination as existed was almost inextricably complicated and vitiated by its involvement in respect to finance, selection and control of staff, and lines of administrative control with the highly centralized National Government. Accordingly, the first objective to be accomplished was to extend the political autonomy provided for in the Local Autonomy Act to the area of local public personnel administration. The second major objective was one which all public service laws in a democracy hold in common; that is, the promotion of efficiency of public administration along lines consistent with democratic administration.

With this general background in mind, the division proceeded to develop more specific studies of the circumstances and requirements

of local public administration Due to the fact that there have existed no personnel agencies at the local level, there were problems to be considered such as the provision of expert guidance, technical training, and interim technical supervision and control.

Meanwhile, work proceeded in recognition of the fact that laws were only first steps and that bureaucratic reform in Japan would be a facade unless the laws were immediately, expertly and fully enforced. First priority in the Division Schedule of Operations was given to the selection and training of a "skeleton staff" for the Temporary National Personnel Commission Early in January an open competitive examination was developed by the examination branch of the Civil Service Division Out of the approximately 1,000 persons who took the examination, a quarter was selected from the top of the list, ranked according to scores made on the examination, to take the first basic training course for the staff of the National Personnel Commission.

The first basic training course in public personnel administration was given to the staff of the National Personnel Commission and representatives of the various ministries from February 2, 1948, until May 14, 1948 The objectives of the course were to give the trainees the primary concepts of personnel management, to arouse their enthusiasm for the task ahead, and to give them some sense of security in their new work. By the results of the examinations and through personal observations, it is concluded that these objectives have been met.

Total attendance at this training course was somewhat in excess of 400 trainees Those persons who attended the course representing other ministries and agencies of the Japanese Government were to form a nucleus of personnel directors and technicians upon the activation of the public personnel program and establishment of "operating" personnel offices under the provisions of the National Public Service Law.

In the development of a work program for the installation of a national personnel system in the Japanese Government, early consideration was given to organizing the functions of the Commission, drafting rules for the administration of the program, establishing the Commission in suitable quarters, and developing its technical and administrative staff.

At the time that the organizational pattern of the Commission was being developed, appropriate office space was sought and secured. The ex-Ministry of Home Affairs Building was assigned to the National Personnel Commission and immediate renovation of the first floor was undertaken, stressing those factors of office layout and equipment which would reflect efficiency in administration

In organizing the functions of the Commission, the work was divided into clear-cut units of operation These were labeled "sections" and were coordinated through a level of bureaus headed up by the executive director who reported to the Commission These sections were conceived as units which could be established in the order of their importance and urgency in the development of the Commission's program without the necessity of establishing all units simultaneously This simplified the presentation to the Japanese Government of the proposed organization and assisted in the development of its staffing

Concurrent with securing office space for the Commission, a training program was undertaken to indoctrinate a staff of personnel in public administration and modern practices of personnel administration This group of trainees was recruited by transfer from other Government positions and from outside by open competitive examination Upon the completion of the training program, analysis was made of each trainee and in accordance with his capacity and interest each was assigned to one of the sections which was being established at that time.

A set of rules was drafted based upon the National Public Service Law. These rules im-

plement the Act but at the same time do not include a great deal of procedural information. This latter type of information will be covered by procedural memoranda issued by the Commission. It was felt that a simplified set of rules would be more understandable and more readily administered by the Commission and the operating personnel offices.

Normal procedure in the installation of a merit system would call for the early identification and survey of the "critical" positions of the organizations falling within its scope for the purpose of classifying such positions and developing examinations for the selection of qualified incumbents.

The Civil Service Division held in abeyance this part of its schedule of operations. Extensive reorganizations throughout most of the ministries and major agencies of the Government of Japan were being proposed in the spring of 1948 for legislative enactment by the Diet. To have attempted to identify and evaluate specific existing positions at such a time of structural fluidity would have undoubtedly resulted in much lost motion and unnecessary disturbance to the officials and organizations involved.

Nevertheless, general preparations for the identification and examination of critical administrative, technical, and professional positions were possible and were accomplished by the position classification and compensation and the examination branches of the Civil Service Division. Continuing studies were made of the structure and functions of the various governmental organizations, and thousands of test items, drawn from general experience in examining for positions in the public service, were compiled and conveniently indexed. This groundwork would greatly facilitate the prompt development of examinations as soon as it might become advisable to identify specific "critical" positions in the Japanese Government.

High priority in the Division's schedule of operations was given to the revision by amendment of the National Public Service Law. Contemporary events, particularly the injurious effect of an almost continuous series of strikes and other labor dispute tactics on the part of organized government employees, gave practical demonstration of the importance of strengthening the provisions of the law, the effectiveness of which had been nullified or reduced in the version enacted by the Diet. Accordingly, a comprehensive revision of the law in the form of a series of proposed amendments was completed in May 1948.

Coordination of these proposed amendments in General Headquarters was delayed by serious differences of opinion which developed between the Government Section's Civil Service Division and the Economic and Scientific Section's Labor Division on such questions as scope of coverage of the National Public Service Law, the meaning of collective bargaining as applied to government workers, and the use of strikes or dispute tactics against the government. Concrete suggestions to the Japanese Government were withheld pending reconciliation of these intramural differences in General Headquarters.

By July 1, 1948, when the Temporary National Personnel Commissioners assumed responsibility under the National Public Service Law for personnel administration in the Government of Japan, the situation, from the point of view of successful civil service reform, was decidedly unfavorable and further delay might have rendered it irretrievable. The points of view of the two staff sections proving irreconciliable, the issues were laid before the Supreme Commander and discussed before him at length on July 6, 1948. The decision of the Supreme Commander on the disputed issues formed the basis of a letter which he addressed on July 22, 1948, to the Prime Minister of Japan in which he called attention to weaknesses in the National Public Service Law and suggested that it be revised in accord with basic principles governing public service in a democratic gov-

ernment.[3] The way was now open for the Civil Service Division, in direct dealings with the Japanese authorities, to advise on necessary revisions of the law and the implementation of it so as to make the Japanese civil service both democratic and efficient.

[3] B 8c, General MacArthur's letter of July 22, 1948 to the Prime Minister of Japan regarding revisions in the National Public Service Law

plement the Act but at the same time do not include a great deal of procedural information. This latter type of information will be covered by procedural memoranda issued by the Commission. It was felt that a simplified set of rules would be more understandable and more readily administered by the Commission and the operating personnel offices.

Normal procedure in the installation of a merit system would call for the early identification and survey of the "critical" positions of the organizations falling within its scope for the purpose of classifying such positions and developing examinations for the selection of qualified incumbents.

The Civil Service Division held in abeyance this part of its schedule of operations. Extensive reorganizations throughout most of the ministries and major agencies of the Government of Japan were being proposed in the spring of 1948 for legislative enactment by the Diet. To have attempted to identify and evaluate specific existing positions at such a time of structural fluidity would have undoubtedly resulted in much lost motion and unnecessary disturbance to the officials and organizations involved.

Nevertheless, general preparations for the identification and examination of critical administrative, technical, and professional positions were possible and were accomplished by the position classification and compensation and the examination branches of the Civil Service Division. Continuing studies were made of the structure and functions of the various governmental organizations, and thousands of test items, drawn from general experience in examining for positions in the public service, were compiled and conveniently indexed. This groundwork would greatly facilitate the prompt development of examinations as soon as it might become advisable to identify specific "critical" positions in the Japanese Government.

High priority in the Division's schedule of operations was given to the revision by amendment of the National Public Service Law. Contemporary events, particularly the injurious effect of an almost continuous series of strikes and other labor dispute tactics on the part of organized government employees, gave practical demonstration of the importance of strengthening the provisions of the law, the effectiveness of which had been nullified or reduced in the version enacted by the Diet. Accordingly, a comprehensive revision of the law in the form of a series of proposed amendments was completed in May 1948.

Coordination of these proposed amendments in General Headquarters was delayed by serious differences of opinion which developed between the Government Section's Civil Service Division and the Economic and Scientific Section's Labor Division on such questions as scope of coverage of the National Public Service Law, the meaning of collective bargaining as applied to government workers, and the use of strikes or dispute tactics against the government. Concrete suggestions to the Japanese Government were withheld pending reconciliation of these intramural differences in General Headquarters.

By July 1, 1948, when the Temporary National Personnel Commissioners assumed responsibility under the National Public Service Law for personnel administration in the Government of Japan, the situation, from the point of view of successful civil service reform, was decidedly unfavorable and further delay might have rendered it irretrievable. The points of view of the two staff sections proving irreconciliable, the issues were laid before the Supreme Commander and discussed before him at length on July 6, 1948. The decision of the Supreme Commander on the disputed issues formed the basis of a letter which he addressed on July 22, 1948, to the Prime Minister of Japan in which he called attention to weaknesses in the National Public Service Law and suggested that it be revised in accord with basic principles governing public service in a democratic gov-

ernment.[3] The way was now open for the Civil Service Division, in direct dealings with the Japanese authorities, to advise on necessary revisions of the law and the implementation of it so as to make the Japanese civil service both democratic and efficient.

[3] B 8c, General MacArthur's letter of July 22, 1948 to the Prime Minister of Japan regarding revisions in the National Public Service Law

third echelon was made up of the towns and villages. These three levels of government are the major ones. Each unit within the three levels is a juridical person, which clothes it with such powers that the people within its area can be controlled by it and at the same time its own corpus is controllable by the State.

The remaining three echelons in local government derived their power by delegations of authority from the laws referred to below and their structure from regulations issued by the Minister of Home Affairs. None of the bodies so created was a juridical body, therefore, and their character changed with additional delegations or withdrawals of authority. These three levels were sandwiched in between the people and city or town and village governments. This system was formed by a vertical integration of (1) the Neighborhood Associations or *Tonari Gumi*, which were compulsory units of some 8 to 15 families and made the first rung of the hierarchy; (2) the block associations or *Chonaikai* and *buraku kai*, which were again compulsory units of ten *Tonari Gumi* and formed the second rung, and (3) the federations of the *Chonaikai* or *Rengokai*, which were units of 100 *Chonaikai* and made up the third and last rung. The federations were generally formed in the larger municipalities and were not found in the towns and villages. This system was well integrated. The lines of authority and control led straight to the central government—mostly in the Ministry of Home Affairs. The suitability and efficiency of this system for propagandizing, exhorting, ordering and otherwise regimenting the entire population were astonishing. Thus, when the central government desired the people to support the war effort more earnestly, the governors ordered the mayors and they, in turn, ordered the heads of the three sets of organizations to control the families.

The nature of the local governmental system can best be understood by an examination of its relation to the people and of the elements which compose it. There follows therefore, a brief description of: (1) The rights and duties of the people, (2) the powers and responsibilities of the chief executives, (3) the position of the assemblies, (4) the divisions of administration and their authority, (5) the supervision of local public bodies, and (6) the condition of financing.

The privileges of the people as individuals in Japan, as provided in the five organic laws, were in terms of the grants in the Meiji Constitution which above all else stressed the duties of the subjects: (1) Manhood suffrage with certain qualifications was enjoyed; (2) certain voters with further qualifications could stand for indirect election of chief executive of the village, town and city as well as for direct election of legislator for the assemblies of all entities; (3) the Japanese right of petition was given, and (4) the right to use the "property and establishments in common with others and the duty to share in their burden."

Because of the relative impotence of the local positions to which candidates could stand for election, these privileges were weak reflections of the individual's rights as known in the Western democracies. Moreover, because of further controls found in other laws, ordinances and regulations, the individual's sphere of political activity was pitifully small.

The chief executives of the three top echelons of local government were alike in name only. To some degree under the laws their powers and responsibilities were somewhat similar for their respective jurisdictions. Because of the imperial ordinances and some agreements, there were sharp and severe gradations which with Japanese finality placed each of them in the political and governmental "positions in which they belonged."

2. The Executive

The governor, as bureaucrat and appointed official of the central government, the Ministry of Home Affairs, was truly the most important administrator in the prefecture. The record over a half century confirms the fact that few were

the occasions when his power was questioned or his will resisted by any element in the local public body.

With the enactment of the Law Concerning the Organization of Urban and Rural Prefectures on May 17, 1890, the governor was clothed with a dual character. Until that date, the governor had been a national official only.

The national element of the governor's character, even though formed before, had been given more specific detail and definition in the Regulations Concerning the Authority of Local Government Officials of July 20, 1886. This important imperial ordinance established in each prefecture the authority of the governor as the highest authority exercising national governmental powers in the prefectures. Of some five or six other high ranking governmental officials also in the prefecture, from the Ministries of Finance, Agriculture and Forestry, Railways, Transportation, and Communication, the governor was the only one who could (1) issue prefectural ordinances, (2) demand the dispatch of troops to quell disorder should the need arise, (3) supervise the heads of cities, towns and villages, and (4) control almost completely the personnel of the prefectural government through the minor or *hannin* rank officials whom he could select, promote, transfer or dismiss, and the *sōnin* rank officials, whose appointment was approved by the Emperor, but with whom he could do the same with the consent of the Home Minister. It was in this regulation that the governor was made a direct appointee and in some degree a henchman of the Home Minister who virtually controlled the governor's entire career as a govermental official.

Supplementing this ordinance was another concerning court ranks, the *Joijorei* of May 6, 1887, which became the *I Kai Rei*, or Law Concerning Court Rank, on October 21, 1926. The governor was of *Chokunin* rank, (appointed by the Emperor) which gave him a position of great political and social prestige. Moreover, by another ordinance concerning the pay of the grade of higher class officials, the governor's annual salary ranged from ¥4,650 to ¥5,350, or above that of a bureau chief and just below that of a vice minister in the national government. Other laws and imperial ordinances gave the governor particular powers and functions in specific field to act for the various competent ministers.

3 Relationship of the Executive to the Legislative Bodies

The second element of the governor's dual character consisted of his authority in the local government system by the prefectural ordinances. Within the prefectural government itself, he was an official to be pleased and feared. (1) He alone could call the prefectural assembly into regular and special sessions and to all practical purposes determine their duration, (2) he could override the assembly's action and, if the occasion were made difficult by the assembly's "stubbornness," he appealed to the Home Minister, and (3) he presided over the prefectural council which was elected by and out of the assembly to meet during the 9, 10 or 11 months of the year in which the parent body was not in session.

Further powers in the local government system were evidenced by the degree of supervision which the governor could exercise over the cities at one level and the towns and villages at another. At the time when the indirect elections took place for the village head, the town head, and the city mayor, the candidates' names went to the governor's office for approval; hence, the elective process was not conclusive because of this compulsory element of approval by the executive. The governor could almost, at his own discretion, remove a village or town head from office as well as dissolve a village assembly or town assembly. Upon his recommendation the Home Minister removed the mayor or dissolved a city assembly.

These powers are all political controls. They should be viewed in conjunction with the fi-

nancial ones, especially on the submission and final approval of the prefectural budget by the assembly. It was the governor's prerogative to formulate the budget and with very narrow limits hold the assembly to pass it. In the expenditure of national funds he did not have to make an accounting or even report the sums to the assembly. Moreover, by an indirect "permission-seeking" system to which the mayors and headmen had to conform, the governor had quasi-control over the budgets of the village, town and city. Through this control over local finances, the governor was the most powerful official in the prefecture.

The chief executives of cities and of towns and villages were elected to their offices indirectly for a renewable term of 4 years each. Their powers and functions were set forth in specific legislation, but, as has been shown in the discussion of the governor's position in the prefecture, these mayors and headmen, except perhaps in the 20 largest cities in Japan, played no real part as local officials in creating, developing or maintaining local governments. The authority exercised by the mayors of cities was greater than that exercised by the headmen of the towns and villages. The mayor of the city, as provided in Article 87 of the Law Concerning the Organization of Cities, was given supervisory powers over the local public body and the authority to represent it officially. In general, he had the power (a) to present all the important bills to the assembly or to the city council and to see that they were carried into effect, (b) to manage property and the establishments of the local public body, (c) to take custody of the official documents and papers, (d) to supervise the city accounts and be responsible for the receipts and disbursements, which included the collection of rents, fees, allotted charges and statutory equivalents for labor, and (e) to control personnel within his area. The mayor's relations with the assembly and with the city council resemble those of the governor with his corresponding advisory bodies. If he considered any resolution or action of the assembly to be contrary to the public interest, he could, with or without consulting the assembly, take the matter to the governor and ask for his review with the idea of annulling such resolution or act. In general, his relation with the assembly, as established by law, was most favorable to him. In matters of the budget he had the power to consider any alterations of his bill, which he had the sole power to present, as a vote of nonconfidence and put on the members of the assembly the burden and cost of running for reelection. He, being appointed, ran no such risk. He had the power to convoke the assembly, and he, not the chairman of the assembly, was the head of the city council. He was given the general power, as provided in Article 91, of disposing in his discretion of any matters which the assembly or the council did not complete. This general power included those situations in which it was supposedly inconvenient to convene the assembly or hold a meeting of the council. In general, with regard to the management of the city's affairs, the mayor was under the direct supervision of the governor and, indirectly, under the supervision of the Minister of Home Affairs.

For certain purposes, the mayor acted independently of the jurisdiction of the assembly. Certain laws specified that the mayor would have jurisdiction in his own office over matters of health, roads, education, school construction, care and engineering control of small rivers, and hospitals for the insane.

The headmen of towns and villages within their spheres of jurisdiction performed in a similar capacity to that of the mayor. As an official in local government, however, his work was restricted and, in general, it can be said that the real substance of all laws relating to government had been planned and directed for execution some time before the affairs reached his office.

The mayor, being elected indirectly by a vote of the assembly, was the final selection from a list of three candidates sent by the assembly,

through the governor, with his recommendation, to the Minister of Home Affairs The headman of a town or village was elected indirectly by the town or village assembly. His name only was sent to the governor, who, under his own authority, either approved or disapproved.

The mayors and headmen were salaried persons, although the law provided that they could, if they desired, treat the office as an honorary post. Outside of the larger cities, the salaries of all these officials were in no way commensurate with Western standards, nor, when compared with the great bureaucracy throughout Japan, did these local officials, in performing their functions and rendering service, receive equivalent compensation

The assemblies of the prefectures, cities, towns and villages in Japan have never been legislative bodies as in the Western democracies All of the assemblies had general characteristics. The assemblymen were elected from their districts for a renewable term of 4 years They received meager expense allowances, but no salaries. The laws provided that they would be called into either regular or special sessions by the chief executive only. They did not even possess the power to hire and supervise their own personnel. When once elected, the members had little authority under which they could exercise their own initiative for the fulfillment of either local needs or desires The prefectural assemblies had a minimum of 40 members; the city assemblies had a minimum of 30, and those of the towns and villages had 10. Membership beyond those minima was restricted to a populational scale Meeting in regular session but once a year for a period of 30 days, they did little else but feign debate upon the annual bill which became the budget.

The administration, both as to structure and organization and as to character and number of personnel, varied sharply between the prefectural governments on the one hand and the city, town and village governments on the other. In the prefecture, the department heads established with the consent of the governor the various sections and, within these, depending upon the nature and volume of the business, the various units. The entire personnel of the prefecture came under the governor's supervision. Most of the personnel were governmental officials of *hannin* rank, a fewer number of *sōnin* rank and perhaps not more than four of *chōkunin* rank, of whom the governor was always the highest in grade. Because most of the personnel were governmental officials, their authority and prestige in the prefectures were distinctly above those of any other officials. It is axiomatic that these bureaucrats made much of the situation and did not hesitate to trade on it.

With the exception of the larger cities and, in particular the six very large ones, the administration of the city, towns or villages was at a marked disadvantage. The administration was carried on through a series of sections, which were broken down into units The personnel who performed the functions of these sections and units had meager education, were never paid well, and were coaxed throughout their lives to consider their rendering of continuously long hours as a personal duty to the program. Indeed, the onus of government fell upon this unhappy lot. Without question, over the half century of time in which these local entities functioned, the national government saved billions of yen by cudgeling this enormous group of people into performing services virtually for nothing. Moreover, in comparison with the government personnel in the prefectures, the city, town and village officials commanded little respect; the prefectural officials looked down upon them. Unfortunate, too, for good government in the cities, towns and villages, the positions of mayor, the headmen and sometimes chairman of the assembly became graveyards for retired government officials. Field surveys performed by the Local Government Division in the cities, towns and villages showed only too frequently that the governmental officials or bureaucrats in Japan not

only took the positions which they desired, but also performed in them as they pleased, and in so doing, left the burdens and difficulties of governmental affairs to these hundreds of thousands of underpaid local officials to perform as best they could.

The financial resources of the villages, towns, cities and prefectures have always been meager. Because the central government has maintained a close supervision over all finances, these local public bodies have had no real control either in taxation or in budgetary affairs. No material independence has ever existed for the floating of local public loans. The Ministry of Home Affairs and the Ministry of Finance have had dual authority over all local governments, although the major responsibility rested with the former. With the dissolution of the Home Ministry, major responsibility for financial arrangements for local public entities was assumed by the Ministry of Finance. Local budgets have been maintained by routine forms prescribed in the enforcement ordinances for the basic local government laws. In general, they have been an executive function. The powers of the auditors and inspectors have been subordinated to the executive.

III. Analysis of the Organic Legislation

The fundamental laws creating the local governments and the most important imperial ordinances relating to them covered a wide range of powers and responsibilities, yet they centered nearly all the authority in either the central government or its agents. In order to show the contents of the laws on local government and point up the general nature of the work performed by the Local Government Division in its reorganization of them with the Japanese, each law is listed with a statement of explanation.

1. The Law Concerning the Organization of Urban and Rural Prefectures was composed of 147 articles and 4 additional provisions relating to particular amendments. The chapter and section titles are given below to illustrate the character of the law as well as to serve as a measure of the other four laws.

Chapter I. General Provisions.
Chapter II. Prefectural Assemblies.
- Section 1. Constitution and Election.
- Section 2. Powers and Duties and Regulations for Administrative Affairs.

Chapter III. The Councils of Urban and Rural Prefectures.
- Section 1. Constitution and Election.
- Section 2. Powers and Duties.

Chapter IV. Administration.
- Section 1. Organization, Appointment and Removal of Officers.
- Section 2. Powers and Duties.
- Section 3. Salaries and Allowances.

Chapter V. Finances.
- Section 1. Property, Establishments and Prefecture Rates.
- Section 2. Estimates of Revenue and Expenditures.

Chapter V-2. Associations of Prefecture.
Chapter VI. Supervision of Administration.
Chapter VII. Additional Provisions.

The Law was created originally as Law No. 35 of May 17, 1890, and has undergone several amendments, the last of which were those made mandatory by the Tojo Cabinet in 1943. This Law constituted the position of the prefectural governments at the beginning of the Occupation.

2. The Law Concerning the Organization of Cities was composed of 10 chapters, 181 articles and 6 additional provisions relating to particular amendments. The Law had its origin as Law No. 1 of April 25, 1888, which at that time applied not only to cities but also to towns and villages. After the Diet was created, it became a separate law for city government. The general treatment of the substance of the

law follows that of the prefectural law except for necessary differences which concern the jurisdiction of cities. The general provisions recite the nature of cities and their political area, the rights and duties of the inhabitants of cities, and the manner in which the by-laws and regulations of a city can be formulated The war amendments to the law placed the mayor in the same position in relation to the rest of the city government as was the governor to the prefectural assembly What autonomy existed in a practical sense, therefore, was taken away The city administration was simply made an appendage to the national system

3. The Law Concerning the Organization of Towns and Villages was composed of 9 chapters, 161 articles and additional provisions which were similar to those of the other laws. This Law was enacted on April 4, 1911 Under its provisions, towns and villages, as local public bodies, had less position and authority than did the cities Moreover, unlike prefectures and cities, towns and villages had no council organization The size of town and village assemblies also was materially smaller than those of the cities and prefectures Here again, as with the other two general laws, the war amendments gave the Home Minister and the prefectural governor even more direct control over the headmen of the towns and villages

4. The Law Concerning the Tokyo Metropolis (To), enacted on June 19, 1943, was a special law which brought to a close a long series of attempts to secure metropolitan status. The metropolitan area of Tōkyō no longer would have a mayor, the governor of Tōkyō-To was put in the same relation to the 35 autonomous wards of Tokyo as he was with the mayors of other cities, towns and villages within the boundaries The ward heads were appointed by the Home Minister, which had not been the case when the mayor presided over the wards. The divisions of administration had been called bureaus because of their size and importance when Tōkyō had the status of a *Fu* (urban prefecture); in the change, no material reorganization was effected. The Law contained over 170 articles, with supplementary and additional provisions. In the codification of the Law Concerning Local Autonomy, the special character of Tōkyō-To has been altered little

5 The Law Concerning the Hokkaidō Assembly was passed March 28, 1901, as Law No 2 Together with the Imperial Ordinances and the Hokkaidō Expense Law, it provided a fundamentally different organization from all other prefectures The Governor General of Hokkaidō had more authority and responsibility than any other governor in Japan With its 14 districts, the Hokkaidō government operated in its area in as singular a manner as did Tokyo-To Even though many provisions of the Law Concerning the Organization of Urban and Rural Prefectures were applied to Hokkaidō, it remained different from the others up to the eve of the Occupation. With the passage of the Law Concerning Local Autonomy, the essential differences were eliminated, so that today, even though Hokkaidō contains a vastly greater square mileage than other prefectures, its government has much the same powers and responsibilities as the others

6. Enforcement Ordinances

The Imperial Ordinances which implemented these laws, contained the kind of substance which should have been law. Most of the desirable elements were either incorporated into the Law Concerning Local Autonomy or used in its implementing Cabinet Order or ministerial regulations. The enforcement ordinance concerning the Organization of Cities or the Law Concerning the Organization of Towns and Villages was one of 9 chapters, 71 articles and several additional provisions.

The Imperial Ordinance entitled "Regulations Concerning the Authority of Local Government Officials" (*Chihokankansei*) determined the number, grade and character of the officials in the prefectures. It also established the organization of the prefectures, which included the governor's secretariat, the Internal Affairs Department, the Police Department and the Economics Department. Depending upon the size of the prefecture's business, there could also be an Engineering Department and an Economics Department No. 2. The responsibility of each department was well defined. Further divisions of the department were made into sections and these into units. The control of the Home Minister on all issues of any importance was reflected in the fifty or more articles of this long-standing ordinance.

In the process of drafting the Law Concerning Local Autonomy, the Local Government Division used a number of provisions of this ordinance; in the main, matters concerning the control of the central government and police affairs were discarded because of the policy of decentralization.

IV. The Central Government

1. The Ministry of Home Affairs

The central government of Japan has for over a century been highly oligarchical and authoritarian. The administration of the affairs of government has been in the hands of a bureaucracy within the great organs of state, the Ministries. At the beginning of the Occupation, each of the central ministries had its jurisdiction over the prefectural governors for the accomplishment of affairs falling under the competence of that Ministry. The Law Concerning Government Organization established the relationship of the Ministers to the governors. Article 5 of the general provisions of this law prescribes:

> "The Minister of each Ministry possesses the right to give directives or instructions to the Governor of Tokyo-To, the Superintendent-General of the Metropolitan Police Board, the governor of the Hokkaido District, and all the prefectural governors concerning the affairs for which he is responsible."

Article 6 of the same law provides that:

> "The Minister of each Ministry supervises the Governor of Tokyo-To, the Superintendent-General of the Metropolitan Police Board, the governor of the Hokkaido District, and all the prefectural governors, concerning responsible matters. In case he finds that the order and treatment given by the Governor of Tokyo-To, the Superintendent-General of the Metropolitan Police Board, the governor of the Hokkaido District, or the prefectural governor, injure the public benefit, or infringe upon his competence and are contrary to provided regulations, he may suspend or cancel the order and action."

Within each of the national Ministries a bureau has existed for supervising the execution of the Ministry's functions in the prefectures. Although all the Ministries have at times exercised most important powers over the prefectural authorities, the two most influential were the Ministry of Home Affairs and the Ministry of Finance, and of these two, the former has been the dominant one. The Home Ministry did not just grow into this position either automatically or gradually. It was created with the responsibility of controlling domestic relations and, in general, all conditions within the interior. Because of its control of (1) the Shrine Bureau which zestfully fostered State Shinto, (2) the Bureau of Local Affairs which had charge of the administration of elections and all the local governments, (3) the Police Bureau which headed the centrally controlled police system, (4) the Bureau of Public Works which had charge of internal construction coupled with subsidy payments therefor, and (5) the Planning Bureau, whose function was essentially to make policy for all types of construction, the Minis-

try of Home Affairs reached into the most intimate elements of the family life of every subject in Japan.

The Bureau of Local Affairs, which supervised the six echelons of the government previously discussed, was the agency of the Home Ministry with which the Local Government Division has had most of its relations in the conduct of its task.

2. The Ministry of Finance

The Ministry of Finance, in general, worked in close relation with the Ministry of Home Affairs. At times, because of personality clashes and jealousies over administrative power, friction detrimental to the local governments resulted. The Ministry of Finance has been directly concerned with the matter of local taxation, in the problem of local budget making, and in the matter of floating of local loans. In matters related to the execution of the tax law, implemented at times by Imperial Ordinances and ministerial regulations, mutual consent of both ministers was required. With regard to budget making and floating loans, the orders, directives and regulations which have gone down to the prefectural governors, have usually been of such nature that agreements between the vice ministers were all that was needed.

3. Other Ministries

The relations of other national government agencies with the governors are summarized below:

1. Within the Cabinet the Bureau of Pensions and the Bureau of Statistics had authority to make specific requests from the prefectural governors. While they were not legally required to go through the Ministry of Home Affairs, they did so in general practice.

2. The Ministry of Education in supervising the national school system dealt directly with its respective units in the prefectures and only indirectly were the governors or the Ministry of Home Affairs involved.

3. The Ministry of Agriculture and Forestry, because of its functions in the administration of agricultural matters in the villages, towns and cities, had many working agreements with the Ministry of Home Affairs. These matters concerned not only crops, livestock and fisheries, but also the enforcement of provisions of many laws dealing with agricultural organizations, both private and quasi-governmental.

4. The Ministry of Commerce and Industry carried out a few functions in the prefectures through the Commerce and Industry Section of the Economics Department of the prefectural government. Because of the great variation of controls desired both before and during the war, the Minister of Commerce and Industry exercised his competence almost completely independent of the Minister of Home Affairs.

5. The Ministry of Welfare, formerly a bureau of the Home Ministry, became an independent Ministry during the war. However, a close relationship existed between the two, even to the interchange of personnel. In fact, joint services were performed in the prefectural governments by these two Ministries.

6. The Ministry of Railways and the Board of Communications had no real connection with the Ministry of Home Affairs or the prefectural authorities, because of their essentially national character.

In addition to the specific law given above, a host of other laws and Imperial Ordinances clothed the Ministers at particular times with authority to direct the governors to take action in one form or another. From the type of delegations of authority sent down, however, it is evident that the real controls never left Tokyo. The governor, even though a nationally appointed official, rarely was given autonomous powers of his own in the laws. Whatever actual local autonomy eked out was permitted by some benevolent official acting individually rather than in pursuance of central government policy.

V. Drafting the Law Concerning Local Autonomy

The procedure planned and followed in order to develop sound and lasting changes for local government involved three separate steps, each of which contained many parts. These steps may be summarized as follows: (1) Formulation of a definite policy concerning local autonomy; (2) discussion of problems of local government and reforms through conferences with various official and interested groups; and (3) surveys conducted in the field for the purpose of testing local reactions concerning the new program.

The first of these had to do with the coordination with other divisions of Government Section and with other staff sections of General Headquarters, SCAP. In general, the definite suggestions proposed and the many changes advocated by the Local Government Division during the year 1946 and the first half of 1947 met with friendly support. During the latter half of 1947 some differences of opinion arose as to the establishment and maintenance of national branch offices beside the offices of the prefectural governments. These differences arose from the desire of some divisions in other Sections of GHQ to have highly concentrated controls emanating from Tokyo, believing that this was necessary because of the critical condition of the Japanese economy. The main program, however, of the Local Government Division, as embodied in Article 156 of the Law Concerning Local Autonomy, has been a preventive measure against a further unwarranted intrenchment of the central government's bureaucracy in the prefectures. The main direction of the Local Government Division's program was toward the elimination of branch offices of the national government performing the same or overlapping functions as those performed by the prefectural governments.

1. Coordination within Government Section and the Japanese Government

The first step, therefore, for Local Government Division was to formulate a definite policy which the Chief, Government Section, could approve as the section's policy to guide the course toward realization of local self-government in implementation of chapter 8 of the new Constitution.

The second step taken in developing an adequate law in terms of a settled policy involved the many conferences held with five different groups of Japanese in Tokyo. These conferences and discussions were carried on daily and, although entailing much time and effort, yielded most fruitful results. The first group of conferences and discussions was held with the high ranking officials of the Ministry of Home Affairs and of the Ministry of Finance because of the direct and indirect jurisdiction of these two Ministries over all the affairs of the local public bodies. Further effort was directed toward the Ministry of Commerce and Industry, Ministry of Agriculture and Forestry, Ministry of Education and Ministry of Welfare. The essential work was with the Ministry of Home Affairs at the beginning, almost entirely with the Bureau of Local Affairs, particularly with the bureau and departmental chiefs, because it was necessary at the outset to obtain facts in law and in procedure for the operation of the three levels of local government as the bureaucracy in Tokyo conceived them to be and, in fact, actually directed the local officials to carry out. In daily meetings week after week the details of every article of each of the five organic laws affecting local government were analyzed. The same process was followed in the examination of the enforcement ordinances for each of the laws and of the Imperial Ordinance concerning the authority of local officials. It was fundamental, of course, to the proper implementation of the established policy for the entire program to have these sets of facts together with the Japanese bureaucratic reasoning and conception not only of what local government

had meant, but also what it could mean under the new policy.

A second series of conferences and discussions was undertaken with the executive members of the many policital parties All the political parties, those which had membership in the Diet and those which had failed to elect candidates to office, were asked to submit expressions of opinion and definite proposals In each of the detailed conferences, sharp distinction was made between statements of specific party programs and the personal opinions of the various members of the parties Some of the most interesting observations in Local Government Division's records are found in these various interviews because of the wide range in thinking and the earnestness in presentation of views by the participants

A third series of conferences and discussions was held with the women members of the Diet, not as members of particular political parties but, more especially, as representatives of specific electorates in their respective districts Their insight into the issues of village, town, city and prefectural governments was a revelation to many people, not the least of whom were the Japanese men representatives Too many had discounted their abilities Without particularized backgrounds or special training in governmental and political matters, they displayed the greatest common sense, advancing practical, workable solutions to many issues Their contributions came mainly as suggestions concerning governmental organizations for schools, matters of health and welfare, elections and the duties of voters, and what are frequently referred to as "matters of good citizenship."

A fourth series of conferences and discussions was held with men and women from educational institutions and learned societies Their remarks and contributions were not confined to matters requiring long-range policy and planning and activation in the distant future; the members contributed definite proposals of immediate applicability The freedom with which they spoke up and the substance of their remarks was a tribute to the perspicacity of the political scientists as a group That they had previously been reticent about expressing views that might be considered liberal was due to the restrictions and threats to which they were subjected under the old military cliques

A fifth and final set of conferences and discussions was held with the Diet committees specifically appointed to deal with the development of local autonomy The Diet committee in 1946 contained a number of members who were eager to see removed the long-standing and unwarranted national restrictions on their local communities This special committee was of a temporary nature, as were most committees under the old Imperial Diet Nevertheless, these members, recognizing their new position of responsibility as legislators with actual power, exerted themselves to attempt legal realization of long-cherished hopes for the improvement of the local government system The new Diet, meeting under the new Constitution, established 21 standing committees Thereafter, the Local Government Division dealt with the members of the Standing Committee on Public Safety and Local Government established in each House Each of the committees made great and earnest efforts to produce a law which would strengthen and clarify the powers and responsibilities of all local entities Indeed, the members of both committees contributed a number of ideas of their own in contrast to the basically bureaucratic concepts originally put forward in the government bill Their contributions were responsible for a great many amendments to the original government bill. Because the standing committees are the executive elements of the Diet charged with the responsibility of implementing chapter 8 of the Constitution, the discussions and remarks in the committee sessions were of a more "finished" and formal nature than those of the previous four series of conferences discussed above. All the ideas from these other

four groups were transmitted to the two committees for their consideration. The committees then became the governmental crucibles in which all the political elements were fused to produce a final law for the plenary session of the Diet to consider. The free and unrestricted pooling of the opinions, suggestions and points of view upon courses of action to be taken in the preparation and passage of a real law on local autonomy, forms a record of deliberations unique in the history of Japanese governmental affairs.

2. Field Surveys

The third step taken to carry out the program consisted of many detailed investigational trips and surveys into the prefectures. The purpose of these trips was not only to gather facts and opinions in the field, but to test against the opinions and comments of the people in the local areas the facts and opinions that had been amassed in Tokyo.

The work in the field was done in two stages. The personnel of the military government teams were met before the Japanese and the mission was explained to them. They responded with friendly and instant aid. Their reports and records, as well as their volunteered information and advice on the "local situation," proved of great value. This type of information was always welcome, for it could not otherwise have been acquired by the members of the Local Government Division in the time available for the survey.

The many interviews and long discussions with the local Japanese authorities took place in the villages, towns, cities and prefectures. The checking process on the Tokyo data was something new to them. The reactions of the local people to the ideas and plans put forth for them by the Tokyo bureaucrats and others were always revealing. The reactions varied: At times there was agreement, sometimes amazement or simple disappointment and regret was registered. At no time during the entire field checking did any official fail to state his opinion upon a problem or an issue put to him. In the prefectures the discussions were held with the governors, departmental and sectional chiefs and the chairmen and members of the prefectural assembly. In the villages, towns and cities they were with the mayors, their deputies, section chiefs and the chairmen and members of the assemblies. Many other conferences for fact finding, checking and testing were carried on with quasi-governmental officials and with some of the leading citizens in the various communities, such as representatives of the press, financial institutions, industrial companies and farm organizations. The localities in the far North at Wakkanai and Habomai, in Hokkaidō, and in the far South at Yamagawa and Kagoshima were the extremes in distance from the central government covered by the field trips. In more than one locality there was the expressed hope that a "hands and legs" government would soon be relegated to history and that it would be replaced by a thinking government, one in which local needs, ideas and desires would be influential in the local public body's life.

On the return to Tokyo the reactions of the government officials to the information and ideas gathered in the villages, towns, cities and prefectures served as a counterpart to those previously shown by the local officials to the Tokyo ideas. In some instances the bureaucrats showed ready agreement with the data, in others, outright astonishment and, in some, deep resentment at having their thinking and planning questioned or challenged. The results of these interviews, discussions and talks, both in the local communities and in Tokyo attest to the fact that not all the brains capable of planning for, establishing, and carrying out, responsible government, either locally or nationally, rest with the bureaucracy in Tokyo.

This part of the program, to produce a reorganization in all the local governments, required a basic six months' period of travel over all Japan. This basic period was supplemented

by another period approximating four months in which another series of field investigations was undertaken in order to examine proposals, procedures and practices, and to analyze the reactions to new plans and considerations.

VI. The Law Concerning Local Autonomy

The Law Concerning Local Autonomy, enacted April 17, 1947, for the first time in the history of Japanese governmental affairs established legal rights and procedures through which the people can participate in their local governments.[3] Moreover, for the first time the Law has brought to all local public bodies, villages, towns, cities and prefectures the executive and legislative branches of government as they are understood by the Western democracies There has been a severance, long needed, of the executive's powers of domination over the legislature. In the executive's department there have been desirable changes in the administrative organization. The nature and extent of the reforms may be gauged from a brief explanation of the law's provisions with respect to (1) The people's position in relation to their governments, (2) the powers and responsibilities of the executive, together with the administrative reorganization, and (3) the powers and responsibilities of the legislative body

1. The People Vis-à-vis Autonomy

The people of Japan have been brought in close relation to the village, town, city and prefectural authorities The citizens of each local government today have powers which they can exercise directly for dealing with their chief executive, their legislators and other elected officials.

a. The voters have the power of recall

(1) The first use of this power is when an electorate is dissatisfied with the chief executives or particular members of the assembly, the voters, by following the procedures of the law (Arts. 80, 81, 82, 83) may cause the individual or group of individuals to vacate his or her or their offices The steps taken are as follows·

(a) The persons concerned draw a petition which must be signed by one-third the voters of the local public body, whether it is a village, town, city or prefecture,

(b) The petition is then given to the Election Administrative Committee which forthwith must hold an election,

(c) If the election by a majority vote of the electorate is unfavorable to the person or people, he or she or they must vacate the position (Art 83)

(2) The second use of this same power can be taken by the voters to cause dissolution of the assembly, the steps for which are the same as those given above

(3) The third use of this power concerns the recall and removal of the assistant governor or mayor, the assistant head or treasurer, electoral administration committeeman or inspection commissioner, as is provided in Article 86. These people are not elected to their offices, but appointed with the ratification of the assembly; their recall and removal procedure necessarily is different from the two situations already given:

(a) A petition to start the proceedings must be signed by at least one-third of the voters;

(b) The demand is given to the mayor who must forthwith:

(1) Make the matter public, and

[3] Appendix II 14

(2) Present the case to the assembly;

(c) The vote of the assembly can only be taken if two-thirds of the members are present; it is an unfavorable vote if three-fourths of the members cast their ballots against the incumbent; and

(d) The notification to vacate is given to the official by the chief executive rather than by the Election Administration Committee, as is the case with the elected officials.

b. The second power which can be exercised by the people directly is the initiative. Many issues—the enactment, revision or repeal of by-laws—may come before the public for which they will desire to start proceedings of their own. Moreover, they may desire to force a slow-acting local public body to make a decision. The steps in this procedure are as follows:

(1) The petition to get the issue started requires but one-fiftieth or 2 percent of the voters:

(2) The petition is presented to the mayor who must

(a) Make the demand public, and

(b) Within 20 days call a meeting of the assembly, should it not be in session, and then present the demand, together with his opinion, to that body.

(3) The assembly has to act one way or the other; and

(4) The mayor must make the result known to the public (Art. 74).

Another form of the people's power to demand action is their right to require the inspection commissioner to undertake a particular investigation into the management of any public undertaking or, more especially, into financial affairs. The petition goes to the inspection commissioners who must make the demand and also the investigation known to the public and, after completion of the investigation, report the findings publicly to the assembly and to the chief executive (Art. 75).

c. The third power of the citizens of any local public body concerns the right of the individual, man or woman, to bring suit against the local public body itself for recovery against an illegal action committed by that body. This issue, now before the Diet, is expected to be enacted as an amendment to Article 96 of the law. In addition to the section which will be added for such a needed right, there are general provisions of the Civil Code which establish procedures for citizens to recover damages from local public bodies.

d. The fourth power provided the individual citizen his or her right to sue any official personally for his wrongdoing as an official, similar to a "taxpayer's suit" in the United States. An amendment to Article 243 provided this long needed remedy.

2. The Powers and Responsibilities of the Executive

Under the Law, the functions of the governor of the prefecture and the mayors of the village, town and city follow the principles of representative government. The changes introduced by the law are fundamental. The prefectural governor has a dual capacity: First, he is the elected chief executive of the prefecture performing local functions; second, he is a national official performing national functions. The position of the mayor differs; hence it is treated separately.

a. *The governor as local official.* Any citizen 30 years of age and eligible to vote is eligible to run for the office of governor. The candidate need not necessarily be a resident of the prefecture in which he runs for office; age and Japanese citizenship are the two tests of eligibility. The governor has a 4-year term of office, as have the chief executives of city, town and village. However, the term of office as used in Japan is actually not "fixed" in the sense in which the term is used in the United States, because the chief executive can, during this term of 4 years, be ousted by a vote of nonconfidence. This procedure follows the British pattern.

Certain restrictions are put upon the governor the moment that he assumes office. In general, they are the following:

(1) He shall not hold either the office of Councillor or the office of Representative in the National Diet concurrently with his governorship;

(2) He must not make any contracts with the public entity, directly or indirectly,

(3) He must give a 30-day notice before resigning from office, unless he has the consent of the assembly (Arts. 140, 141, 142, 145), and

(4) He may not appoint his wife, one of his children, one of his parents, or brother or sister to either the offices of chief or deputy accountant or chief or deputy treasurer (Art 169)

Concerning personal matters (1) The governor's salary and travelling expenses are provided by law (Art 204), and

(2) Upon retirement the governor is given an allowance and, in case of his death, his family is given an allowance (Art 205)

The governor as the chief executive of the prefecture has charge of and coordinates all departments

(1) He supervises some specific and administrative organs (Art 156), and

(2) He must set up such bureaus and departments as are provided for specifically by Diet law, or by prefectural by-law With regard to the establishment of those departments designated as permissive, he has discretion (Amended Art 158) Moreover, in case he believes that any act of an administrative officer is ultra vires, he can suspend its action (Art 151)

Formerly, the governor was the coordinator of all the offices of national agencies situated in his prefecture, subject only to the instructions or veto of the Cabinet Minister concerned Now he does not have this general authority unless the law which sets up given kinds of prefectural offices specifically provides him with this responsibility (Art 157) In the event an office or department is to be abolished or transferred by Cabinet Order under an existing law, the governor takes the action and should anyone refuse to comply, he can be given a fine, the maximum of which is ¥2,000 (Amended Art. 159.)

Specific functions of the governor include.

(1) Administers all functions of the prefectural government for which the prefecture pays the cost. These functions cover all the usual range of local government activities such as police, fire, public works, roads, agriculture or fishing.

(2) Presents bills to the assembly for legislation, as well as other messages and communications

(3) Manages the real estate and establishments of the prefecture.

(4) Is the chief accounting officer of the prefecture

(5) Possesses the custody of all official documents, papers and instruments (This function should not be confused with the jurisdiction of the newly established assembly libraries to be instituted in conformity with the Law Concerning Local Autonomy)

(6) Enforces and authorizes the collection of the independent local taxes, charges, fees, and rents according to national laws or prefectural bylaws

(7) Administers other governmental matters not otherwise specifically provided for (Arts. 147 and 149)

(8) Makes appointments of personnel and exercises discipline (Art 154).

The governor may derive further local government powers from other national laws His functional powers in particular fields of government are found in such laws as the two following

(1) In Police Law, section 3, Article 20, the governor is vested with the following authority·

> There shall be established under the jurisdiction of the Governors of *To*, *Do*, and Prefectures Public Safety Commissions of *To*, *Do*, and Prefectures
>
> "The Public Safety Commissions of *To*, *Do* and Prefectures shall exercise operational control over the National Rural Police of *To*, *Do*, and Prefectures "

Article 21 provides:

> "Members of the Commission shall be appointed by the Governor—with the consent of the assembly, etc "

Article 24 gives the governor authority to dismiss members of the commission for cause with

the consent of the assembly or if two members belong to the same political party.

(2) In the Fire Defense Law complete authority is given to the mayors of villages, towns and cities. Article 17 thereof, however, reserves to the governor the following:

"The fire defense of such special wards shall be controlled by the Governor of *To*.

"The Chief of the Fire Department of special wards shall be appointed and dismissed for cause by the Governor of *To*."

Article 22 provides:

"The mayors and headmen of cities, towns and villages shall, on forms and in the manner provided for by the National Fire Defense Board, make reports of fire defense statistics to the National Fire Defense Boards through the Governor of *To*, *Do* and Prefectures."

Article 24 provides that the Fire Board, the National Safety Commission, the governors and the mayors and headmen may make agreements beforehand to carry out the purpose of the act effectively.

The governor of a prefecture may have from one to three assistant governors who, under certain delegated authority, act on behalf of the Governor but have no authority in their own name. Only when the governor dies or vacates his office can one of these assistants actually assume the office and the powers of governor until an election can be held and a new governor selected. The assistant governor is appointed by the governor after confirmation by majority vote of the assembly. If there is more than one assistant governor, assumption of the governor's office is in the order of their previously fixed priority as provided for in a prefectural by-law. If both the governor and the assistant governor are disabled at the same time, the senior secretarial official temporarily carries out the duties of the governor. (Amended Art. 247.) The governor has the power to delegate temporarily any of his duties to an official of the prefecture (Arts. 152 and 153).

The governor has many duties and responsibilities in his executive relationship with the assembly. The major ones are listed below:

(1) His general duty is to call the assembly for the regular and special sessions although the assembly has certain rights also regarding the same;

(2) It has been the custom in Japan for the governor to introduce most of the bills into the assembly, but it is not his exclusive jurisdiction because any member of the assembly can likewise introduce bills;

(3) Perhaps of all the bills which the governor introduces into the assembly, none is more important than the budget which by law he must prepare and submit (Art. 234). Later, if necessity arises he may supplement or submit revisions of budget which has been passed (Art. 235); and

(4) He is required to make a financial report at least three times a year to the public at large. The assembly through a bylaw can specify the dates of such reporting to the public.

Differences of opinion on public affairs between the executive and all of the legislative bodies are settled in two ways:

(1) The governor may send the issue back to the assembly for reconsideration when he considers it ultra vires. If the reconsideration is refused, the governor may bring an action in court (Art. 176);

(2) He can and probably will rely upon the procedure of nonconfidence. This generally results from irreconcilable differences on the budget (Art. 177). In the exercise of the vote of nonconfidence the governor takes one of two steps:

(a) He dissolves the assembly, bringing about the election of a new assembly, and then waits for a confirmation of his stand from the newly elected assemblymen. Should he not receive a favorable vote, he must resign forthwith and a new gubernatorial election would be held; or

(b) He decides not to dissolve the assembly, and, therefore, is forced to resign immediately. The Election Administration Committee must hold an election within the specified period provided by the law (Art. 178).

The governor's powers in relation to other matters of the prefecture are supervisory but

far different from those under the old law concerning the organization of urban and rural prefectures, and other ordinances. He can remove a mayor of a village, town or city from office for cause only. (Amended Art 146) The process is through a *mandamus* procedure which involves the courts. The Japanese had utilized this procedure administratively in a minor way. The officials were interested in it and desired an extension of it to suit the new situations. Because the removal of a person from high elective office is serious action, the function of doing so is no longer left to administrative discretion. Thus the power of removal is no longer left to the simple discretion of the governor and the man who appointed him, the Minister of Home Affairs

As another local right, the governor instead of the Minister of Home Affairs, decides changes in the boundaries of any political subdivision on the basis of appropriate proceedings by the local public entities involved (Amended Art 259) The same determination is made with regard to divisions of local entities (Amended Art 260) When two or more prefectures join in a project for some specific purpose, the governors choose a central chairman from among those concerned (Art 253)

b. The Governor as a National Official The other half of the dual character of the governor's position is evidenced when he acts as a national agent for a competent minister of the national government, as provided for in a Diet law. As such, he is responsible for the execution within the prefectural boundaries of Diet laws and Cabinet and ministerial orders relating to national affairs The administration of many functions during critical economic conditions following war and defeat had to be executed under nationally established policies in order to conserve and allocate scarce materials and food products The cooperation of the governors in carrying out the rice delivery quotas and other similar programs indicate that this dual system can work effectively in Japan. Until normal conditions return on all levels of government, especially in finance, local governments will be working under certain restrictions.

The governor, acting as a representative of the central government, is responsible for central government funds placed in his hands for national purposes.

(1) The Administrative Offices Law of 1947 in Article 7 provides the competent ministers of the central government with directive and supervisory powers over the heads of the local governments when the latter are to execute national affairs The Law Concerning Local Autonomy gives the central authorities a procedure for bringing a governor to account for failure to carry out the prescribed duties under the national law or cabinet or ministerial orders The mandamus proceeding is incorporated in an amendment to Article 146, and applies not only to the governors but to mayors also The amendment provides a simple, relatively swift and effective method of forcing governors to carry out national functions assigned to their offices In certain cases of necessity it allows the ministry concerned to take over particular duties until they have been accomplished The proceeding also provides for the removal of the governor in cases in which he refuses to act after a court order has been issued requiring him to do so The removal is made by the Prime Minister after the case is referred to him from the appropriate high courts The proceeding is in three parts

(a) The original or mandamus hearing,

(b) The contempt hearing, and

(c) The transfer of the case by the high court to the Prime Minister for removal proceedings. While this proceeding is designed to provide a method of control by the central government over the execution of national laws and orders in the prefectures, it also affords to the governor a sounding board on which he can raise legal objections to laws which might be unconstitutional or otherwise unpopular with his constituents. (Amended Arts. 146 and 150)

(2) In the execution of national laws, the

governor may at times perform acts unpopular with his local constituency. As national official he has the task of persuading his constituency of the necessity for such actions in the execution of national laws and policies.

(3) Further assignment and delegation of national functions to the governors can be observed in some newly passed Diet laws.

(a) In the Road Transportation Law there are delegations of authority to the governor. Article 4, paragraph 5, subparagraph 2 provides:

"The power or authority provided in chapter V shall be delegated or commissioned to Director of Road Transportation Supervision Office as well as to Governor of *To*, *Do*, *Fu* or Prefectures."

Subparagraph 3 provides:

"Matters pertaining to entry or use of land for the purpose of constructing automotive car road may be delegated to Governor of *To*, *Do*, *Fu* and Prefecture."

Article 8, paragraphs 5 and 6, provides that the governor shall make recommendations to the Minister of Transportation and he, in turn, to the Prime Minister and the members of the local road transportation commission.

(b) The Employment Security Law, Article 7, leaves to the governor the following:

"The authority to manage such affairs concerning the enforcement of Employment Security Law as control of the business of the Public Employment Security Office and the supervision of the chief of personnel thereof."

Article 9, page 3, provides as follows:

"The authority to appoint and discharge the third officials and other personnel who are engaged in the affairs concerning the enforcement of the Employment Security Law in the Prefectural office and in the Public Employment Office."

Article 10 gives the governor authority to appoint and to discharge liaison officers.

Article 27 gives to the governor the authority to establish and to maintain vocational training projects or to delegate this authority to some other agency.

Article 55, page 3, gives the governor authority to expend necessary funds other than those given by the central government to carry out the purposes of the act.

(c) In the Unemployment Insurance Law, the authority to give approval to employers desiring to come under the Act, a normal function of the Labor Ministry, is delegated to the governor in Article 8, page 1, and Article 13, page 1, and Article 52 of said law.

(d) The Disaster Relief Law, Article 12, gives the governor power to take over supervision of business, production, collection, sales, distribution, custody and transportation of supplies necessary for relief, or he may expropriate necessary relief supplies. Article 13 gives him or agents authority to enter places to look for supplies and to demand reports thereof. Article 22 gives to the governor the exclusive jurisdiction of handling relief work under the Act. Article 24 gives him authority to requisition medical construction, engineering, and transportation facilities to aid in the relief of disaster under the Act. Articles 25, 26, 27 and 28 delegate other similar powers.

(e) In the Children's Welfare Law there are 16 paragraphs which give certain powers to the prefectural governor. Article 8 places the Local Child Welfare Board under the jurisdiction of the governor. Article 9 gives to the governors and the Welfare Minister authority to appoint members to the central or local welfare boards. Article 11, gives the governor authority to designate in which area the welfare workers shall be assigned. Article 16 provides that child welfare stations shall be under the jurisdiction of the governors. Article 19 places the welfare program and security phases of chapter 11 under the supervision of the governors.

(4) The governor exercises direct supervision over the prefectural administrative departments which handle the affairs of the area. The law in Article 158 establishes the department (bu) as the highest administrative division in the prefectural government. Within the department are the sections (ka) and within these are the units (kakari). Before the enactment of the Law, the department was an integral part of the bureaucratic ladder of organization with the chief of the department looking to Tokyo for recognition and promotion. Today he has reached the highest administra-

tive office in the local autonomous system The details of organization of civil service for the local public bodies will be provided for by the Diet; selection, placement, training, promotion, dismissal, retirement, salary, pension and such related affairs will compose the substance of the Law.

Because the structure of the administrative departments affects the whole prefectural government, it was desirable to continue the development of the structure of the departments in harmony with a principle utilized by Western countries as well as by Japan itself for over half a century; thus the division of fixed and permissive categories for departments was retained It was found desirable to have such departments as are basic to all prefectures the same, because of the advantage of simplicity and uniformity, and in order that the major functions of prefectural governments in their dual capacity could be carried out essentially through these fixed departments. Because of some prefectures having divergent interests with a major volume of business, it was desirable that a series of permissive departments be allowed so that these local specialties could be performed The stated limit of the permissive departments was considered advantageous, as it allows for conservative expansion in the future

Article 158 provides for the prefectural departmental organization The mandatory class contains the Departments of General Affairs, Health, Education, Welfare, Economic Affairs, Agricultural Land and Public Works, and the permissive class contains the Departments of Agriculture and Forestry, Forestry, Commerce and Industry, Labor, Fisheries and Public Utilities In Tokyo-To and Hokkaidō some few variations are found The law makes quite clear that no prefecture need form a permissive department unless the prefectural government desires to do so The central ministries in Tokyo can suggest that the permissive departments be established, the suggestion, such as it is, may be taken or may not Under no conditions can the central ministries order the particular permissive department established.

The prefectural governmental structure, as provided in Article 158, has ample room by itself to accomplish all the work necessary to administer the prefectural government, not only in its local character for functioning locally, but also in its national character in functioning nationally Besides the prefectural office, there had been the establishment of national branch offices of a duplicating and overlapping character The prefectural authorities should prevent such mismanagement They have the legal power for many cases under Article 156, which states

[illegible]

needed in connection with the operation and function of such authorized branch offices shall be paid for by Ministry or Central Agency concerned

The provisions of the preceding paragraph shall not apply to the judicial administrative and disciplinary organs, police offices, railroad, communications, postal service (including insurance and savings divisions), national institutions of learning, national hospitals, and sanitariums, navigation, meteorological stations, hydrographic organs, harbor construction offices, and forestry stations and public works branch offices whose functions are solely supported by the national treasury

3. *The Powers and Responsibilities of the Legislative Bodies*

The powers and responsibilities of the village, town, city and prefectural assembly have undergone far-reaching changes Today the assembly is a legislature of real power and responsibility It is a representative organ government, free to deliberate for the best interests of the people All of the actions taken by it must be within the Constitution and subject to existing national laws. The people now have a real part in government of their local entities. From their already expressed eagerness, they may be expected to develop and utilize their assemblies to the full.

a The assembly derives its existence fundamentally from the Constitution, Article 93 of which provides: "The local public entities

governor may at times perform acts unpopular with his local constituency. As national official he has the task of persuading his constituency of the necessity for such actions in the execution of national laws and policies.

(3) Further assignment and delegation of national functions to the governors can be observed in some newly passed Diet laws.

(a) In the Road Transportation Law there are delegations of authority to the governor. Article 4, paragraph 5, subparagraph 2 provides:

"The power or authority provided in chapter V shall be delegated or commissioned to Director of Road Transportation Supervision Office as well as to Governor of *To*, *Do*, *Fu* or Prefectures."

Subparagraph 3 provides:

"Matters pertaining to entry or use of land for the purpose of constructing automotive car road may be delegated to Governor of *To*, *Do*, *Fu* and Prefecture."

Article 8, paragraphs 5 and 6, provides that the governor shall make recommendations to the Minister of Transportation and he, in turn, to the Prime Minister and the members of the local road transportation commission.

(b) The Employment Security Law, Article 7, leaves to the governor the following:

"The authority to manage such affairs concerning the enforcement of Employment Security Law as control of the business of the Public Employment Security Office and the supervision of the chief of personnel thereof."

Article 9, page 3, provides as follows:

"The authority to appoint and discharge the third officials and other personnel who are engaged in th affairs concerning the enforcement of the Employm Security Law in the Prefectural office and in the P Employment Office."

Article 10 gives the governor auth appoint and to discharge liaison offic

Article 27 gives to the governor ity to establish and to mainta training projects or to delegat to some other agency.

Article 55, page 3, give thority to expend necess those given by the cent out the purposes of the act.

(c) In the Unemployment Insurance Law, the authority to give approval to employers desiring to come under the Act, a normal function of the Labor Ministry, is delegated to the governor in Article 8, page 1, and Article 13, page 1, and Article 52 of said law.

(d) The Disaster Relief Law, Article 12, gives the governor power to take over supervision of business, production, collection, sales, distribution, custody and transportation of supplies necessary for relief, or he may expropriate necessary relief supplies. Article 13 gives him or agents authority to enter places to look for supplies and to demand reports thereof. Article 22 gives to the governor the exclusive jurisdic tion of handling relief work under the Act. ticle 24 gives him authority to req medical construction, engineering, portation facilities to aid in the r ter under the Act. Articles 2 delegate other similar pow

(e) In the Children's paragraphs which g prefectural govern Child Welfare of the gover nors and point n board it

ing

Today h

(4) To establish and manage docks, moles, piers, wharves, warehouses, sheds and other establishments necessary for other maritime and land transportation and to regulate the rights to use them.

(5) To establish and manage schools, laboratories, experimental stations, libraries, art museums, goods exhibitions, auditoriums, theaters, musical pavilions and other establishments relating to education, science, culture and promotion of industries, and to regulate the rights to use them.

(6) To establish and manage hospitals, isolated wards, sanatoriums, disinfecting stations, maternity hospitals, residences, hostels, dining-halls, baths, public latrines, pawn shops, workhouses, public nurseries, asyla for the aged, almshouses, reformatories, jails, butcheries, dust-disposing stations, dirt-disposing stations, crematories, cemeteries, and other establishments relating to health and sanitation and social welfare and to regulate the rights to use them

(7) To clean, disinfect, beautify, and prevent noises or to restrain acts injurious to public morals and acts staining cleanliness and besides to deal with the matters relating to health and sanitation and refinement of public morals

(8) To prevent crime, to prevent disasters, and to carry out relief and protection of victims of disasters and to deal with similar affairs

(9) To relieve, protect and care for minors, the poor, the sick, the old and weak, widows, defective persons, vagrants, insane or inebriate persons and similar persons

(10) To manage forests, meadows, land, markets, fishing water surface, public workhouses and besides to undertake profit enterprises deemed to be necessary for the promotion of public welfare

(11) To carry out hill and river improvements, agricultural land development, adjustments of arable land, reclamations of land from public water surface, city planning, improvements of districts under poor conditions and other improvements of land.

(12) To deal with affairs relating to fostering and promotion of inventions, improvements of special products and other increase and improvements in production.

(13) To protect and manage historic places, places of scenic beauty, and monuments.

(14) To investigate the matters necessary for disposition of affairs of an ordinary local public body and to make statistics of them.

(15) To deal with the affairs relating to official registers, identification and registering and other similar matters relating to the inhabitants, visitors thereto and other persons deemed necessary

(16) To inspect, carry out inspection with respect to such matters as relate to meters, various products, domestic animals

(17) To establish limitations relating to structure of buildings, facilities, the area of yards, court density, open space districts, the areas on the basis of dwellings, trade, industry and other state of business of inhabitants in accordance with the determination of laws

(18) To appropriate, enter upon and hold personal or real property for any public purpose in accordance with the determination of laws

(19) To adjust and coordinate the activities of the public bodies and other similar bodies within the area of an ordinary local public body

(20) To levy and collect local taxes, rents, fees, allotted charges, entrance fees, or statutory labor and actual articles in accordance with the determination of laws.

(21) To create and manage the permanent property, sinking funds and besides the reserve fund and grain and similar matters.

An ordinary local public body may not deal with such national affairs, including but not limited to those mentioned, as follows:

(1) Affairs relating to all judicial matters.

(2) Affairs relating to penal punishment and national disciplinary punishment.

(3) Affairs relating to national transportation and communication.

(4) Affairs relating to post.

(5) Affairs relating to national institutions of learning and research.

(6) Affairs relating to national hospitals and sanatoriums.

(7) Affairs relating to national navigation, meteorological and hydrographic institutions.

(8) Affairs relating to national museums and libraries.

A special local public body shall, in accordance with this law, deal with its affairs.

A local public body shall not deal with its affairs as contravene any laws or cabinet orders or ministerial regulations duly authorized by law, and, furthermore, a city, town or village or a special ward shall not deal with its affairs as contravene any by-laws of the metropolis, district or urban or rural prefecture concerned.

The actions of a local public body which have contravened the provisions of the preceding paragraph are null and void.

e. An assembly today, as contrasted with its previous existence, has the power to regulate itself and to determine to a certain extent its own membership. This power in itself is very important as it could deprive the electorate for a certain period of time of full representation. This power is exercised by the assembly when it passes on certain qualifications of its members and when it exercises its right to discipline its members for misconduct even to the extent of expulsion. (Sec. IX.)

f. Some of the most far reaching powers ever to be exercised by an assembly in Japan are provided in Article 100. An assembly during the course of its existence can investigate the affairs of the local entity in a far more thoroughgoing and final manner than ever before provided. The assembly, as it may deem necessary, or the special committee conducting the investigation, has the power to summon persons to give information. This person, of course, is required to appear. If the assembly determines that this person has given a false statement, he is subject to imprisonment. If, however, prior to the conclusion of the investigation he tells the truth, then the assembly may not refer the person to the procurator for prosecution. The assembly itself has no power to inflict punishment; it can only refer the facts to the procurator for whatever action he may decide to take. This power for the assembly has long been needed and from evidence thus far shown it will act as a decided support for strong local autonomy.

A person who is called upon to give testimony or present records relating to official secrets may decline on that ground. The assembly must then obtain the consent of the government or public office concerned before the person is forced to give the testimony or produce the records. If within 30 days after being requested, the government or public official either does not declare the matter in question contrary to the public interest if disclosed, or gives its consent to its disclosure, then the testimony must be given or the records produced. (Art. 100.)

This investigatory power of the assemblies is extremely important, as it may involve the right of the assembly to question the acts of the chief of the local public body by demanding reports and examining his management of the affairs of the local body, his execution of resolutions and the manner of raising revenue and the expenditure thereof. (Arts. 98 and 121.)

The power does not apply to the management of local affairs only. It also applies to national affairs delegated to the chief of the local public body. If these matters concern public interest, a written statement may be sent to the administrative office concerned. (Art. 99.)

This power to call an official of the local government to report or make explanation is not limited to the chief of the local public body. It applies equally to any official including members of the Election Administration Committee and the Inspection Committee. (Art. 121.)

The assembly need not conduct the investigation itself, but may call upon the inspection

committee to make an inspection of the affairs of the local public body and upon completion of its inspection to make a report to the assembly. This should be the normal procedure for routine inspections or investigations [illegible] inspection committees [illegible] from members of the assembly [illegible] and 133.)

g. The question of finance [illegible] of major importance [illegible]. Because of this the assembly [illegible] great power in this field. Every matter involving finances must be [illegible] by the assembly.

The head of the local public body has the responsibility of preparing the budget [illegible] final responsibility rests on the assembly [illegible] has the power to revise [illegible]. The work of the assembly in regard to the revenue and expenditures [illegible] proval of the budget. In addition the assembly must be informed of proper accounts [illegible] an audit of the receipts and expenditures (Art. [illegible]).

Practically every financial [illegible] of the local public body must be approved by the assembly [illegible]. The amount of salary and allowances of public officials [illegible] (Art. [illegible]), the [illegible] (Art. [illegible]), the [illegible] (Art. [illegible]), and many other matters [illegible] the part of the assembly.

h. The assembly [illegible] the appointment [illegible] of the local public body [illegible] administrative [illegible] of the local public body (Art. [illegible]).

The [illegible] commissioners [illegible] with the consent of the assembly [illegible] of the government [illegible] important [illegible] by the governor [illegible]

[illegible]

The assembly [illegible]

[illegible]

of recommendations by members of the organizations. Although no salaries were paid, membership fees were collected from all households. Departments included women's, agricultural, cultural, health promotion, consumption economy, young men's tax payment and other economic and social functional titles.

The neighborhood associations had been most fully utilized as extensions of the executive agencies of cities, towns and villages. They provided thousands upon thousands of unpaid workers for local agencies of government, thus in actual effect placing an additional tax upon those ordered to serve. Furthermore, since no salaries were paid and the work was of a time-consuming nature, requiring much of the day, the average individual among the working element had been unable to accept a responsible position in the associations or had been forced to serve at considerable loss to himself. In many instances, therefore, the heads came from the "bosses" or, in some cases, loafers of the neighborhood, who had time to spare and who were not unaware of the opportunities for diverting rationed foodstuffs and other items to their own use. Such heads were destitute of any sense of public service, indifferent to the needs of the members, and in many cases had used their positions to become local despots. They had also served well the purposes of the Imperial Rule Assistance Association, the thought police and other instruments of oppression. Such individuals represented a serious danger to the successful democratization of local government, not only because they were steeped in the past regime in methods of surveillance and regimentation, but because many of them had also built cliques and machines for their own patronage and control of local elections.

2. Steps in Abolition

In whatever manner the *Tonari Gumi* performed beneficial services, and there were a few, these could not compensate for the attendant evils. The neighborhood association system, while pretending to historic continuity from medieval times, was in reality a wartime creation. Its ostensible purpose was to promote neighborliness, charity, goodwill and local democracy, but it actually fostered regimentation in so far as it brought every household in Japan under strict supervision and control.

Tonari Gumi chiefs represented the central government. They required all Japanese to observe the letter of each regulation. They served as spies, denouncing those who ventured to hold opinions differing from those approved by militarists. *Tonari Gumi* leaders controlled the machinery by which rations were distributed. If any individual dared protest against contributing his quota to bond drives or to ostensibly "voluntary" war service, or ventured to question the wisdom of the ultranationalist leaders of Japan, the *Tonari Gumi* chiefs could deny him food, fuel, and shelter.

On January 22, 1947, the Minister of Home Affairs, in Home Ministry Instruction No. 4, ordered the entire system abolished. Detailed instructions from the vice minister set forth the conditions and the time limit in which the operation should be effected. Functions of a governmental character were to be transferred back to their proper agencies, while activities which were not governmental were left to individual or to private voluntary group action. These latter activities had always been of a private, personal nature and in normal times would have been carried on without authoritarian regimentation. Paragraph 1 of the instructions stated:

> "All administrative functions, presently performed by *Chonaikaicho*, *Burakukaicho* and *Rengokaicho* thereof, will be transferred to city, town, village or ward on or before April 1, this year."

To inform the general public, the Home Ministry issued newspaper releases explaining the Government's action. These followed immediately after the instructions of abolition of January 22, 1947. The following statement by

Minister of Home Affairs, Seiichi Omura, was released on January 29:

"Through Home Ministry Instruction No 17, issued in 1940, the *Chonaikai* and *Burakukai* were coordinated and strengthened as public organizations and throughout the war were utilized as the lowest branch of the local government administration.

"The *Chonaikai* and the *Burakukai* are entities which had originally evolved through a natural and voluntary process, but close and binding ties with the Imperial Rule Assistance Association during the war, were considered as a perpetuation of a system born of war whose aspects recall wartime regimentation and chauvinism Thus most see in the concept of involuntary memberships in the *Chonaikai* and *Burakukai* the characteristics of a police state

"Until the present moment, in view of exigencies of rationing, it has been administratively unwise to alter [illegible] nances.

"The certifications of residence and other functions [illegible] the new foundation

"The present measures have been taken to implement the democratization of the national system which is the fundamental principle of the new Constitution and the attention of every citizen of this country is called hereto"

Other statements were made in February and March. The abolition of the neighborhood association system naturally aroused apprehensions concerning the problem of staple food distribution—one of the many involuntary duties assigned to the *Tonari Gumi* during the war. It is recalled that the abolition move was opposed by certain interested groups which professed fear that disappearance of the neighborhood association system would jeopardize the distribution of rationed goods.

To dispel all apprehensions, the Agriculture and Forestry Ministry issued a statement explaining the new procedures on March 22, 1947 It was announced that beginning on April 1 staple food rations would be issued to individual consumers rather than through the *Tonari Gumi* The statement emphasized, moreover, that ration distribution after April 1 would suit the convenience of the consumers, who could receive their rations at ration points any day during office hours after the ration was made available

By this action office hours were extended to accommodate the people instead of the rationing officials It was specifically provided, moreover, that it would no longer be necessary to secure approval of the *chonaikaicho*, *burakukaicho*, or any other official of the *tonari gumi* system prior to the issuance of rations. The obligation of members of a *tonari gumi* to secure rations for all families of a neighborhood association, a responsibility previously rotated among families, was completely abolished The new regulations prohibited any requirement that the issuance of rations be made contingent on the formation of any unit or organization They did not, however, forbid neighbors to pool their ration cards for the purpose of receiving ration distribution if it suited their convenience

The Home Ministry, on March 30, issued a similar statement, describing the transfer of *tonari gumi* functions to local government agencies and measures to follow after April 1, 1947. This statement was widely published and was broadcast by radio

The Law Concerning Local Autonomy specifically prohibits the delegation of administrative and financial affairs of government to private and quasi-governmental bodies or natural person.

Further steps to prevent use of neighborhood associations to control the daily life of the people were taken by the Government on May

3, 1947. This action was prompted by receipt of information that the outlawed associations (*tonari gumi*) and federations of associations (*chonaikai* and *burakukai*) were being revived as ostensibly voluntary organizations under old leadership. In Cabinet Order No. 15 the Government took the following measures to end such subterfuge.[4]

(1) All heads or assistant heads of *chonaikai* or *burakukai* who had held office consecutively from September 1, 1945 until September 1, 1946 were barred for four years from any municipal office performing similar functions in their districts.

(2) Such persons were prohibited from issuing any instructions to their former districts.

(3) Government officials were forbidden to issue instructions to neighborhood organizations or similar agencies or to demand presentation of certificates formerly issued by such agencies.

(4) All organizations formed since abolition of the *chonaikai* on January 22 and similar in function to the *chonaikai*, *burakukai* and *tonari gumi* were ordered to disband by May 31, 1947.

(5) Persons who failed to comply with these orders were liable to punishment by fine or imprisonment.

VIII. Financial Reform

1. Coordination

The existing local government finance system is based on the Local Tax Law of 1940 and the Local Allocation Tax Law passed in 1940. The former act authorized a number of taxes called "independent" taxes to be levied and collected by local entities. The latter provided for allocation of certain amounts from taxes collected by the central government to be transferred to the local entities. Both of these acts were amended in 1946 and again in 1947 to increase the amounts available to the local public bodies. These amendments brought temporary relief to the stringent financial situation of local governments but subsequent increases in prices and wages upset the original calculations.

Exercise of the powers and responsibilities given to local public bodies under the Law Concerning Local Autonomy will naturally require financial reorganization of an extensive character. In conjunction with the Economic and Scientific Section of General Headquarters the Local Government Division of the Government Section conducted field trips, conferences and discussions on the problem of local finances, and on the basis of these studies recommended the creation of a special committee responsible to the Diet to study the subject and recommend necessary legislation.

2. Local Finance Committee

On December 7, 1947, the Diet enacted the Local Finance Committee Law which created the Local Finance Committee of which the members are a Minister of State, acting as chairman, a member of the Diet, a representative of the Mayors' Congress, a representative of the Association of Towns and Villages and a representative of the Governor's Association.[5] The committee is assisted by a secretariat. Its life was set at one year from the date of promulgation of the law and it was instructed to prepare preliminary draft legislation for the Diet to consider within 3 months from the date of promulgation of the law.

Article 2 of the law provides:

"The Local Finance Committee shall prepare a compre-

[4]Appendix D: 5, Cabinet Order No. 15 re Tonari Gumi, May 3, 1947.

[5]Appendix H: 27, Local Finance Committee Law; Law No. 155, Dec. 7, 1947.

hensive program for the effectuation of local financial [illegible]

Within 90 days from the date of its creation, the committee rendered a preliminary report in which it recommended amendments to existing tax laws which would result in the transfer to local entities of additional annual revenues of approximately 35 billion yen from admission taxes and monopoly revenues, and another 10 billion yen from new local tax sources, increases from present local tax sources and the creation of new local taxes

Another recommendation of the committee was the creation of a Local Entity Central Bank and Deposit Fund to assist local public bodies in the solution of local financing problems As of early June 1948, the recommendations of this committee had not been acted upon and the issue of local finances was attracting considerable attention in the press with indications that it had become a political issue In general the role of General Headquarters in this program has been to encourage the Japanese to develop for themselves a program which would include the following elements (1) the segregation and separation of tax sources for the national and the local government to attain as practical mutual exclusion as possible, (2) the finding of new sources of revenue by the local entities, (3) the transfer of some existing sources of revenue to local governments, and (4) a reappraisal of the tax allocation, grants-in-aid and subsidy systems At the present stage it cannot be predicted how far the Diet will go in permitting the local public bodies to establish a sound financial system in keeping with their additional responsibilities

IX. *Conclusion*

The Significance of the Local Elections of April 1947 After the drafting of the Law Concerning Local Autonomy, the elections of April 1947 constituted the next logical and necessary step in the process of reorganization of local government, for the incoming officials would be the new functionaries to perform the new duties and assume the responsibilities provided in the new law Henceforward, all chief executives of the local governments as well as all the representatives for the local assemblies would be popularly elected On April 5, 1947, elections for all executives, governors, mayors and village and town headmen were held, and on April 30, elections for assemblymen of prefectures, cities, towns and villages took place

These elections provided the Japanese people with their first opportunity in history to choose all their local chief executives by popular franchise 46 governors, 209 city mayors, 10,210 heads of towns and villages, and 22 heads of the Tokyo autonomous wards These elections, moreover, represented Japan s first elections for local assemblies on the basis of universal suffrage and the first election for local assemblies in which membership had been more than an honorary position Voting in previous elections was based on limited manhood suffrage, with the consequent result that the assemblies normally represented only a restricted section of the Japanese population Moreover, membership meant little in the way of legislative power, for assemblies met infrequently and were completely dominated by local chief executives. In effect, therefore, assemblies merely provided a fiction of popular participation in legislation.

The popular elections of 1947 marked a dramatic break from the past; both newspaper world and the voters were aware of their impli-

cations. The newspaper *Mainichi*, for example, pointed out editorially that local governments constituted "the foundation of central government," that "democratic policies should be started in a small way," and that "the reconstruction of Japan will depend on how our prefectures, cities, towns, and villages rise from the ashes."

In another section of this history, the various technical and other aspects concerning the elections are analyzed in detail.* It is enough to observe here in conclusion that the local elections of 1947, based on universal suffrage, brought a new breath of life into the many communities of Japan. No greater or more effective start could have been made toward the functioning of democratic government in these local public bodies than through this extended free use of the franchise.

Action and Reaction. No sooner had the Local Autonomy Law been passed than several of the ministries and other agencies of the national government, in an effort to maintain direct centralized controls over activities in the local areas pertaining to their respective fields of jurisdiction, began to expand or to establish branch office organizations. These field offices, often performing duties which already existing departments of prefectural and other local governments were designed to perform, not only caused bureaucratic expense and inefficiency, but threatened the growth of healthy local governments. The reaction to this threat was a vigorous and insistent country-wide movement among the local governors and mayors, backed by their local assemblies and supported by their representatives in the National Diet, to cause the government to reduce and rationalize the organizations and activities of central government agencies in the local areas. In May 1948 the Cabinet, in response to this demand, agreed on a "proposed readjustment plan of local offices of national government."[5]

[5] Appendix H:112, Letter from Prime Minister Ashida to General Whitney enclosing his Cabinet's "Plan." and Appendix H:113, General Whitney's reply thereto.

*Section X, Popular Elections.

SECTION IX

Governmental Aspects of Law Enforcement

I. Reorganization of the Japanese Police

1. Historical Background of the Japanese Police

For 265 years before the Meiji Restoration of 1868, Japan consisted of a loose confederation of clans held together by family ties and the necessities of common defense. Although the Emperor was the titular head of state, the *shogun* was the real ruler. National law enforcement was a matter of imposing the will of the *shogun* upon the clan chieftains and collecting tribute from them by the use of military power. The people, having little direct contact with the central government, much less any voice in it, were policed by the sword of the *samurai*, or professional soldier. These *samurai* enforced the edicts of the clan chieftain and levied taxes upon the country's food, goods and manpower for the benefit of their feudal lords and the ruling families.

With the arrival of Perry's Expedition in 1853, the opening of Japan to the outside world in 1858* and the overthrow of the Tokugawa Shogunate in 1867, the rulers realized that immediate action was necessary to maintain their entrenched position against encroachment from both within and without Japan. Accordingly, the *samurai* was converted into a modern soldier or policeman, the feudal oligarchy of the discredited *shogun* was transformed after long study and careful planning by the imperial court into a modern nineteenth century monarchy, based upon a highly centralized scheme of government but with an outward appearance of popular participation. The creation of a modern military machine soon attained for Japan a position of strength and equality among the great powers, laying the groundwork for subsequent territorial expansion and aggression. Under the administration of the Home Ministry a modern police state was created which exacted from the people that degree of frightened obedience so necessary to the existence of a totalitarian state.

An agency similar to the Home Ministry existed as early as 649 A. D. but it was not

*The Treaty of Yedo was concluded with Townsend Harris, American Consul General, in 1857, and signed by officials of the shogunate without imperial sanction in 1858. Similar treaties of commerce were signed shortly thereafter with the Netherlands, Russia, Great Britain and France and opened the ports of Kanazawa, Kobe, Nagasaki, Niigata and Hakodate to foreign trade.

until 1885, 17 years after the Meiji Restoration of 1868, that it formally became the most important agency in the executive branch of the new nineteenth century Japanese State.* The Home Ministry possessed extensive powers and from its inception held a dominant place in Japanese life—the Police Bureau of the Home Ministry alone controlling every phase of Japanese domestic economy. Through its power to appoint and to remove governors, to discipline mayors, and to administer funds, the Home Ministry, with its army of policemen, inspectors, local agents and secret investigators, extended its influence into every home and maintained constant surveillance from birth to death over the intimate daily details of the life of every individual in Japan.

The Police Bureau was first established as an agency of the executive branch of government in 1874 when 6,000 *samurai* from the warrior class of the Choshu and the Satsuma clans were recruited by the government and brought to Tokyo to man the new Metropolitan Police Board. These professional fighting men were soon trained in police duties and in the philosophy of the police state, i.e., to protect the government from the people. They were first used effectively in maintaining the status quo against encroachment from within when they were dispatched to Kyushu to quell the Saigo Rebellion against the Meiji Government in 1877.

Their employment was soon extended during the Meiji era to other fields and 10 years later they were assigned the task of administering the first political purge. This was effectively accomplished by the police under the Peace Preservation Law of 1887, when they physically removed all known anti-government subjects from within a 9-mile radius of the Tokyo castle. The records indicate that 470 families were banished from the Tokyo area by the police within a period of 48 hours.

Their advent into the field of election corruption occurred with the selection of the first House of Representatives to the Imperial Diet in 1890 and lasted until the coming of the Allied Occupation. It was a common practice during that period for the Home Ministry to be charged with the responsibility of delivering House elections to the regime in power. This responsibility was then further delegated to the prefectural governors, Home Ministry appointees, who were in charge of the prefectural police in a highly centralized chain of command extending from Tokyo. Until the 1946 general election, nationwide election reports were first received in Tokyo through the police communications network.

The viciousness of police participation in elections and the reaction of public opinion thereto were effectively illustrated in the first House election of 1890 when government candidates were actually nominated on the recommendation of police chiefs who were also provided with ample campaign funds from government sources in Tokyo. The reaction of democratic forces to controlled elections was significantly and effectively voiced by the people even at that early date when they rejected corrupt police interference by electing 171 anti-government representatives to the first House of Representatives which was comprised of 255 seats.

By the time of the Manchurian Incident in 1931 the Home Ministry had so extended and intensified its control over political activities that the subsequent imposition of a totalitarian system of government was greatly facilitated. This control was exercised principally through the instrumentality of the Special Higher Police. This agency investigated all political or social movements and by the time of World War II it had assumed powers so extensive that it was able to purge from the Home Ministry itself those whose interests and opinions were unsympathetic to its mission.

The activities of the various police agencies

*The Meiji Constitution of 1889 which authorized the legislative branch of government made no mention of the Cabinet Ministries. These had been created by imperial ordinance 4 years earlier and were of equal constitutionality with any agency established b the Constitution.

were gradually expanded until the end of World War II found the police supervising the administration of nearly every conceivable type of governmental endeavor—many completely foreign to the field of law enforcement * This absolute domination of the Home Ministry and the police over every activity of the private citizen was ended only by the abolition of the Special Higher Police in October 1945 and the dissolution of the Home Ministry in December 1947.

2. Preliminary Studies on Police Reorganization

Early in the Occupation the Public Safety Division of the Civil Intelligence Section of General Headquarters, Supreme Commander for the Allied Powers, undertook to determine what reforms should be instituted in the public safety agencies of the Japanese Government Under the direction of the Chief of the Public Safety Division, Mr Lewis J Valentine of the New York City Police, and Mr Oscar G Olander, Commissioner of the Michigan State Police Force, made detailed studies and reports covering the municipal and rural police fields, respectively

The Valentine report recommended that autonomous police forces, patterned after the New York City Police, be established in all municipalities of over 50,000 population, and that the police force should in each instance be responsible through an appointed police commission to the elected local executive The Olander report recommended that a national rural police system be established to serve rural areas and cities of less than 50,000, with police power to operate anywhere in Japan under the direction of an appointed head responsible to an elected government official and with career personnel under civil service The relationship between the two types of forces and the relationship between the police authorities and other agencies of the government were not dealt with in these two studies

On February 28, 1947, the Cabinet presented a draft plan based upon the recommendations of the Valentine and Olander reports and calling for an increase from 93,935 to 125,000 in police strength [1] Although this plan had merit, it was not practicable, chiefly because it did not provide sufficient decentralization of authority and would have delayed the organization of local police departments operated by local self-governing bodies until the new local autonomous entities, provided by the new Constitution, had demonstrated proficiency in self-government

3 Principles of Police Reform

Government Section's objections to the Japanese plan and to the principles it recommended for guidance in police reorganization are clearly set forth in a Memorandum for the Record, dated July 17, 1947, most of which is quoted herewith

> 1 It is the intent of the Governments of the Allied Powers that Japan be restrained from establishing any form of government which might in the future be used to regiment the population and to employ the nation's resources for conquest As an essential feature of this program, it is the desire of the Allied Powers that the conditions necessary for the democratization of Japan be created at the earliest possible moment These conditions include elimination of restrictions on political and civil liberties, inculcation of respect for fundamental human rights, encouragement and support of liberal political tendencies, reform of the judicial, legal, and police systems, modification of the feudal and authoritarian tendencies of the central government, encouragement of local responsibility in government, and removal of all obstacles to the revival and strengthening of democratic tendencies among the Japanese people
>
> 2 Democracy and decentralization are not synonomous Neither are autocracy and centralization A

[1] Appendix D 4 Initial Cabinet Draft Plan for Police Reorganization

* Two types of routine police reports are worthy of note KOGI SHO was a hastily compiled report submitted through channels to the Home Ministry and transmitted in fragmentary form for what it was worth, containing information regarding roadside gossip and rumors circulated in market places TANSOKU-SHO was a detailed report through channels relating to the diligence and reliability of public officials, current charges in public opinion, condition of administrative control within prefectures and municipalities, relations between the heads of government departments and their deputies, public moods, educational activities condition of roads and reports on the private lives and off-duty activities of all government servants

more exact guide is whether the state exists to serve man or man to serve the state. Nevertheless, man's experience since the city states of ancient Greece has been that the inalienable human rights, social and economic as well as political, have been championed most vigorously and have flourished most hardily where the powers of central governments or of great industrial or agricultural hierarchies have been most carefully limited. Coordination is preferable to centralization; general welfare to individual aggrandizement. Power breeds power and begets lasting contempt for the rights of man.

"3. In America, a country without an early feudal or military tradition, democracy developed swiftly in the formulative years because it was free from attack by anti-democratic forces or traditions. In order that a comparable growth may occur in Japan, the most favorable of situations is being created—both in the destruction of old patterns and in the encouragement of the new. In consequence, the great close-knit concentrations of centralized power—financial, military, political, religious, industrial, agrarian—are being destroyed and local governments, small business, farmers, labor, and the people as a whole are being freed from their thralldom to the central government, the great combines, and the landlords. Complementary to this essentially negative program has been the positive encouragement given to the strengthening of democratic tendencies and processes in the new governmental, economic, agricultural, social, and similar institutions. This policy accords with fundamental directives from Far Eastern Command, Joint Chiefs of Staff and State-War-Navy Coordinating Committee, with the American policy for Germany recently enunciated by Secretary Marshall at Moscow, and with the views entertained and oft-expressed by the Supreme Commander. It is grounded on recognition of the impossibility of introducing or maintaining an effective and healthy system of democratic government for all Japan unless the central organs of government are supported by strong and democratic local units, deriving their just powers from the consent of the governed. In the field of local government this policy is specifically laid down in the JCS Basic Directive for Post Surrender Military Government of Japan, which directs encouragement of local responsibility for the local enforcement of national policy.

"4. It has not been the policy of the Supreme Commander to carry out these reforms in piecemeal fashion. Ultimate aims have been sought rather than stepping stones on the way. Japan is admittedly racked by monumental domestic problems—by shortages of food, raw materials, shelter, industrial equipment, transportation. The Supreme Commander must necessarily treat many of these on a short term basis. But such a frame of reference cannot be used for the long-term objective of the Occupation; they must be lifted above the residue of ruined hopes and cities, stripped of ties which would chain them to considerations of a purely ephemeral or military nature, and visualized as components of a final structure which must and will stand the test of history. In consequence positive objections rather than negative objections have guided policy decisions; such sweeping legislation as the Constitution, the Local Autonomy Bill, the Farmland Reform Bill, the Purge Ordinances have in a few months brought to Japan reforms won in other nations only with the passage of centuries. All change leaves dissatisfaction in its wake and may also at times lead to excesses on the part of those who have benefited the most. In Japan, however, it has been felt that the tremendous inertia of local tradition, custom, mores, and patterns of political and economic thought and behavior would serve to hold in check both possible disaffection arising from the new system as well as any tendency to extremism or radicalism in the exercise of the newfound liberties. The results of the recent elections have clearly illustrated that this analysis is correct; as the Supreme Commander has pointed out:

" 'The basic issue before the electorate was a selection between political philosophies. That of the totalitarian extreme right had already been discredited and rejected . . . On the other hand, that of the extreme left, the communisitic philosophy, was still in issue, with its leaders strongly bidding for the popular support. Since the inception of the Occupation . . . this philosophy and its leaders had been given the fullest liberty and freedom of political action in open and fair competition with democratic forces and beliefs. It thus had its full chance and on the merits has failed. The Japanese people have firmly and decisively rejected its leadership and overwhelmingly have chosen a moderate course, sufficiently centered from either extreme to insure the preservation of freedom and the enhancement of individual dignity.'

"It is rapidly becoming self-evident, therefore, that though the further shore may as yet be but dimly seen by the Japanese people, the merits of the bold policy which has sought the sweeping and final objectives of the Potsdam Declaration now and not ten years hence have to date far outweighed any possible disadvantage. Decentralization may well be a calculated risk. But so, too, is democracy. America, for example, is prevented by her form of government from launching a surprise attack against a potential enemy. Yet this military disadvantage is a major sacrifice we inherently make in the interest of our democratic way of life; we do not compromise great principles for the sake of expediency.

"5. Any proposal which seeks to disregard these factors—which would retain a centralized organ adapted to the seizure of absolute power while all about were being destroyed, which would call for gradual future changes while all about are being made at once—needs must be examined with the greatest of care. There are, admittedly, certain examples of centralization which have been permitted to exist in Japan: railways, communications, and the like. Should the police be treated as these?

"6. . . .

"7. It is the considered opinion of the Government Section that exemption of the Japanese police force from the principle of immediate decentralization as applied to date by the occupying powers is not only contrary to the spirit of Allied policy, but would constitute a grievous and culpable error.

"a. In world opinion the Japanese police, in view of the era of government by assassination and of their undemocratic prewar and wartime activities, fall in the same category as the Gestapo and the NKVD. Past infamies cannot readily be brushed aside; until positive

in the world and to require immediate, thorough, and drastic reform of a system which permitted such brutally

tributed to the development of that docility and passiveness of the Japanese people which made possible the promotion of aggressive warfare at the behest of a handful of leaders in the Central Government. The contin-

power serves to induce a general apprehension of retaliatory measures, inhibiting freedom of speech, religion and thought, and in view of the tradition of governmental paternalism serves to maintain that habitual and conditioned acceptance of minute regimentation from

of the central government to reach into every town, village and hamlet in Japan to probe with sinisterness for intelligence, to support or oppose political parties in consonance with the wishes of the central government, and to exercise powers completely contrary to the principle of local autonomy Freedom from fear of the na-

tion, staffed the national police force with Communists and placed Communist chiefs of police in 96 percent of Hungary's counties and 100 percent of her municipalities,

the development of a clandestine army, through the forces of reaction, terrorism and militarism may now be stilled in Japan, the continuance of such a system is a constant reminder of the ease of regimentation and a vicious and everbeckoning invitation to seizure of power by unscrupulous party leaders, by demagogues, or by terrorists. In the last analysis, a centralized police system thus provides not only a weapon by which control of the population could be readily seized by undemocratic forces in the future but also a method by which the

for such enforcement entirely upon the whims of a central police force and a central government whose bureaucracy has stubbornly resisted the enforced transfer of powers from national to local governments, local chief executives will soon find themselves bereft of the very powers necessary to assert and maintain their new position in the governmental structure of Japan The very weakening of government which a central police force is asserted to forestall would thus be encouraged and accelerated That major local echelons of government should have the right to enforce laws is scarcely an unusual privilege, it will be recalled, for example, that the Olander report specifically notes that if and when prefectures elect their own governors and legislatures they may desire to supervise their own police, and provides a method therefor This, indeed, is a matter recognized by the Japanese government itself, the Government's February 28 memorandum on police reorganization notes that the police system should be decentralized as far as possible' and that police administration should 'be entrusted, in principle, to the local public bodies.' Further, the status of the police is not an isolated matter, but one which impinges on nearly every aspect of government Each agency of government must dovetail with all others, each agency in a decentralized program must further accord with the three and only three echelons of government in Japan national, prefectural, and local.

The decentralization and division of other designated agencies have already taken place, keeping pace with the effectuation of the Constitution. The police alone have lagged behind, remain the last strong agency by which the central bureaucracy continues to thwart those provisions of the Constitution which establish the principle of local autonomy. The retention of a strong central police force provides an irresistible temptation to any central executive to use the police rather than more democratic means for the solution of many of its problems affecting local areas. It is imperative that the central government come to operate through other and more democratic agencies, in particular that it come to rely upon enforcement by the courts rather than interference by the police Should present conditions continue, the result in the near future can only be to thrust unnecessary stresses and strains upon the new structure of govern-

ment, which was conceived on the principle of decentralization and will thus be torn between conflicting Occupation ideologies. As for the local governments, like the American Union, they cannot well exist half slave and half free.

"e. The necessity for a strong central police force to provide insurance against widespread unrest or the development of undesirable ideologies is a point frequently raised in support of a state police. The history of the Occupation to date justifies the assumption that no central police force designed to cope with such eventualities will be required during the period of the Occupation. Insofar as later years are concerned, the Allied powers are under no obligation to lay the groundwork for a quasi-military police force for use by the central government in the post-Occupation period; indeed, the Far Eastern Commission policy statement of June 19, 1947 specifically forbids the retention of a gendarmerie. Continued insistence upon the need of a strong central police force for the sake of security and to counterbalance newly-won liberties thus cannot fail to raise questions in Japanese minds both as to the sincerity of American democratic pretensions and the actual compatibility of full civil liberties with the post-Occupation maintenance by Japan of a reasonably orderly society. It will be recalled that no device for the perpetuation of centralized autocracy is more familiar than that which postulates a continuous state of emergency in order to assure the outright delegation to the central government, for day to day administration, of powers normally required only for emergencies. The proposal to maintain in status quo the entire institution of the Japanese state police, in complete repudiation of the principles of the Occupation, in order to provide for a possible future emergency, is a comparable case in point. A more appropriate solution would be to provide for the delegation of emergency powers to the national government if and when it should require them. Further, as long as the police force of Japan stays centralized there will remain in the minds of men, Japanese as well as Occidental, the lurking suspicion that the state police have been pointedly exempted from the application of existing Occupation policies for purposes possibly obscure but hardly democratic. America has nothing to conceal in this respect, but there could be few means better calculated to raise doubts as to the intent of the Supreme Commander to encourage the full and spontaneous democratization of Japan or to adhere to the terms of the Potsdam Declaration and other controlling documents insofar as they apply to the withdrawal of Allied forces in Japan. It would not be long before critics would imply the central police force was tolerated as the principal instrument of post-Occupation American control of Japan. It is imperative in this respect that American policy in Asia be identical with American policy in Europe, of which Secretary Marshall could recently say, without fear of rebuttal:

"'No conditions were attached to . . . withdrawal . . . No political parties . . . have been left behind in European countries to attempt conquest of governments from within. No American agents have sought to dominate the police establishments of European countries.'

"8. . . . This Section recognizes that certain functions can best be handled nationally—standards, identification, communications, training, scientific crime detection, and the like, and that the Prime Minister should possess certain exceptional police powers in the event of grave emergencies, as defined by law. This Section recognizes that certain specialized national police agencies are necessary, such as railway police and customs guards. It is believed, however, that other matters should be handled locally. . . . Because of its understanding and interpretation of the philosophy of the Potsdam Declaration, FEC papers, JCS and SWNCC Directives, the American position at the Moscow Conference, and for the many reasons given above, Government Section will be unable to concur in any proposal with respect to the Japanese police which does not recognize:

"a. That the maintenance of a centralized police force is complete repudiation of the basic tenets of the Occupation and of the basic principles of the new Constitution and is not in conformity with those standards by which the fulfillment by Japan of its obligations under the terms of surrender must be accomplished;

"b. That decentralization of the police force must come without delay and not at the expiration of any period of probation;

"c. That decentralization must be full and final—neither mere lip service to an ideal nor an arbitrary method which does not conform to the structure of Japanese government as it exists today;

"d. That continued failure to act on this matter is a reproach to claims of the democratization of Japan and a very real and continued threat to the future of a democratized Japan."

4. Preparation of the Reform Plan

From February 28, 1947, until July of that year there was very little formal activity on the government's part leading to the development of an acceptable police reorganization plan. This inactivity may be attributed to a combination of circumstances. For one reason, it was felt that no decisive steps could be taken until the new Constitution was in full force. Also, in February General MacArthur had called upon Prime Minister Yoshida to hold national and local elections during April. Throughout the early Spring and until the Katayama government was formed in June, the political situation was not conducive to creative thinking along police lines by responsible government officials. Cabinet ministers and Diet members had not only been participating in election campaigns and lengthy negotiations leading to the formation of a new government, but had also been extensively active in the executive and legislative branches

of government preparing for the enforcement of the new Constitution on May 3, 1947, as well as in the formulation and adoption of legislation considered as indispensable to the implementation of that document

Included among the important laws that became effective with the new Constitution was the Local Autonomy Law which passed the Diet on April 17, 1947 [2] In consonance with the provisions of this law and the new Constitution, the decentralization of police activities in local government, and the reorganization of the institutions charged with the administration of justice became matters of urgency Accordingly, as soon as the Katayama government was formed, action was accelerated and discussions with government representatives on police reorganization were held At the request of General Whitney, the Prime Minister in July appointed a Judicial and Police System Committee in the Cabinet Government Section's interests in the national field were based upon the reorganization of the administration of Justice, including the law enforcement agencies, their place in the governmental structure, and the safeguarding of the principles of local autonomy in any reorganization that took place

The Judicial and Police System Committee was headed by Yoshio Suzuki, Minister of Justice, and included the following Ministers of State: Nishio, Hitotsumatsu, Kimura, and Saito. It was their task to make studies and recommend reform legislation on the following issues:

a. the internal organization of the Ministry of Justice;

b. the relationship of the Ministry of Justice to other ministries and Cabinet boards,

c. the relationship of the Ministry of Justice to other law enforcement agencies of the national, prefectural and local government;

d. the relationship of the procurators and their investigatory staffs to other investigatory and inspecting staffs, including officials having police power; and

e the relationship of all these governmental instrumentalities to the people in the execution of the judicial process.

The Cabinet Committee submitted various reform recommendations to the Prime Minister on August 26, 1947, which included a revised police reorganization plan The Prime Minister forwarded this police plan to General MacArthur on September 3, 1947, accompanied by a letter in which he stated that it represented a compromise between two divergent schools of thought, opposed for the most part on the issues of decentralization and the maintenance of a constabulary available to the national government to meet emergencies He explained that he was thus submitting it informally and would appreciate General MacArthur's opinion and comments [3]

The Prime Minister's letter to General MacArthur typifies the relationship that existed generally between the government and the Headquarters in reaching solutions to Japanese problems Here was a situation in which there were two opposing trends of thought in the minds of cabinet members on an issue of vital importance to the future of Japan. An honest difference of opinion existed It was one of several instances when, in the process of arriving at major decisions, the cabinet sought the advice of the Supreme Commander

The plan as officially proposed by the Japanese provided only for limited and gradual decentralization and retained many of the principles that were objectionable in the old highly centralized structure. The local police, in effect, would have been auxiliary to a national force. General Headquarters, on the other hand, stood for a policy that would guarantee the principle of local autonomy embodied in the Constitution as well as one that would prevent the re-emergence of a police state by effecting the immediate decentralization of

[2]Appendix H 14, Local Autonomy Law, Law No 67, April 17, 1947

[3]Appendix D 6, Prime Minister's Letter Concerning Police Reorganization, September 3, 1947.

istrative. Operational control is defined as the process of enforcing law and order, including (1) directing of police forces in legal police activities, (2) planning and carrying out of law enforcement procedures before and during situations prejudicial to law and order, and (3) use of police power in areas of responsibility as defined by law. It might be termed tactical control. Administrative control is the management of all police matters not included in operational control, such as pay, promotion, supply, training, personnel management and like activities.

a. *Provision Made for Central and Local Police.* (1) *The National Rural Police.* A central police force of 30,000 was established by the law and is called the National Rural Police. It has jurisdiction in the rural areas and in municipalities of less than 5,000 inhabitants only, regardless of whether the urban community concerned is officially designated as a city, town, or village. Its unique feature is that it functions under the administrative control of the National Public Safety Commission and under the operational control of the respective prefectural Public Safety Commissions. All police personnel of the national force are appointed and dismissed for cause in accordance with the Civil Service regulations of the National Public Servants Law.

(2) *The Local Municipal Police.* In municipalities of 5,000 or more the local public entity is responsible for the maintenance of police and the enforcement of law and order. These municipalities have independent police forces which function under the operational and administrative control of municipal Public Safety Commissions. The law limits the total number of local police to 95,000.

b. *Central and Local Police Administration.* (1) *Public Safety Commissions Established.* The act provides for policy-making civilian Public Safety Commissions at the national, prefectural and municipal levels to administer one or both of the two types of control. This feature properly delineates the chain of command, particularly in the National Rural Police. The latter are administered from Tokyo by a National Public Safety Commission composed of five members responsible to, and appointed by, the Prime Minister with the consent of the Diet for staggered terms of 5 years. Appointees must never have been in career police or career public service, and must not be officers of a political party. Not more than two commissioners may belong to the same party. With the approval of the Diet they may be removed by the appointing authority.

(2) *Administration of the Rural Police.* Administrative control of all National Rural Police is provided by a vertical chain of command which starts with the Prime Minister and descends through the National Public Safety Commission, the headquarters of the National Rural Police, the intermediary level of the National Rural Police Region, the National Rural Police Division (in each prefecture) down to the National Rural Police District and then to the individual policeman himself. However, it must be emphasized that this chain of authority is for administrative control only. On the other hand, the elected governors of the 46 prefectures exercise operational or tactical control over the National Rural Police through the prefectural Public Safety Commission, a body composed of three civilian members within each of the respective prefectures, who are appointed and removed by the governors with the consent of the prefectural legislative bodies.

The law establishes six intermediate regional headquarters of the National Rural Police with each regional director responsible to the Director General in Tokyo. He coordinates the prefectural police divisions in matters relating to administrative control and promotes uniformity of activity and procedure; he maintains close liaison with prefectural governors and police commissions, cooperating with them in consonance with national policies, laws, rules and regulations in carrying out local police problems, but there is no operational chain of

command between the region and the prefecture.

Each prefecture, with the exception of Hokkaido which may have 14, has one National Rural Police headquarters with a complement of one troop of National Rural Police The chief of the prefectural National Rural Police is appointed and administered by the director of the National Rural Police Region.

The National Rural Police Headquarters maintains the national police communications system and operates a police education and training system for all police. The headquarters in Tokyo embraces the executive office of the National Public Safety Commission and the National Rural Police. The director general is appointed by the National Public Safety Commission, controls the affairs of the headquarters, exercises administrative control of all National Rural Police echelons and supervises a centralized national criminal identification and criminal statistics system and the operation of criminological laboratories

(3) *Administration of the Municipal Police* The autonomous municipal police forces are administered by three-member commissions who have qualification requirements similar to those of the national commission, serve staggered terms of 3 years and whose appointment and removal by the local elected executive must be approved by the local assembly Under their own operational control these commissions may at their discretion secure the assistance of rural policemen whenever the municipalities require it. Liaison and coordination are mandatory between the National Rural Police and municipal police forces at all times.

Thus the Japanese policeman, national or municipal, at all levels of government, is answerable directly to the people through an elected official held responsible by his constituents for police behavior. Also, the elected executives must select capable administrators who are acceptable to the legislative branches of government—national, prefectural and local

c *Jurisdiction and Functions* In cases where individual criminal operations have been conducted within the area under the jurisdiction of one type of police force and extend into the area under the jurisdiction of the other type, the mutual extension of authority beyond normal jurisdictional boundaries is authorized This feature conforms to "fresh pursuit" laws found in the United States

The Police Law limits the police function to the protection of lives, persons and properties of the people, detecting crimes, apprehending suspects and maintaining public safety These are functions recognized throughout the world as normally belonging to the law enforcement agency of a self-governing people Noticeably absent are such extraneous duties as sanitation, inspection, fire protection, census enumeration, administration (as distinguished from enforcement) of economic controls and the former police duty of maintaining surveillance over the private lives of citizens *

d. *Emergency Police Mobilization* Emergency

*In his letter of September 16, 1947, to the Prime Minister on the subject of police reorganization, the Supreme Commander observed that "in the past one of the ill-conceived aspects of the Japanese police system was the exercise by police officials of numerous administrative functions not related to the task of investigation and apprehension of criminals or the preservation of public order All such functions should be exercised by non-police representatives of the particular ministries having responsibility for such matters and wherever proper should be decentralized to local public entities in accordance with the provisions of the Constitution conferring upon such entities the right to manage their property, affairs and administration ' " In conformity with the above principle, the administration of economic controls is now a function of the Economic Stabilization Board which employs the police only in case of known violations and after obtaining the necessary warrants of search, seizure or arrest as prescribed by the Constitution and the Code of Criminal Procedure Local and national public health agencies enforce sanitation and health regulations calling on the police only to arrest violators Fire fighting and prevention are now provided locally in all municipalities of over 5,000 inhabitants and are no longer a police or national government function The police have been removed entirely from the labor field and any interference or supervision is expressly prohibited except only where the criminal laws have been violated or the public peace disturbed Census enumeration has been decentralized to prefectural authorities The above examples are illustrative but not all-inclusive of former police functions that are now exercised by other agencies

istrative. Operational control is defined as the process of enforcing law and order, including (1) directing of police forces in legal police activities, (2) planning and carrying out of law enforcement procedures before and during situations prejudicial to law and order, and (3) use of police power in areas of responsibility as defined by law. It might be termed tactical control. Administrative control is the management of all police matters not included in operational control, such as pay, promotion, supply, training, personnel management and like activities.

a. *Provision Made for Central and Local Police.* (1) *The National Rural Police.* A central police force of 30,000 was established by the law and is called the National Rural Police. It has jurisdiction in the rural areas and in municipalities of less than 5,000 inhabitants only, regardless of whether the urban community concerned is officially designated as a city, town, or village. Its unique feature is that it functions under the administrative control of the National Public Safety Commission and under the operational control of the respective prefectural Public Safety Commissions. All police personnel of the national force are appointed and dismissed for cause in accordance with the Civil Service regulations of the National Public Servants Law.

(2) *The Local Municipal Police.* In municipalities of 5,000 or more the local public entity is responsible for the maintenance of police and the enforcement of law and order. These municipalities have independent police forces which function under the operational and administrative control of municipal Public Safety Commissions. The law limits the total number of local police to 95,000.

b. *Central and Local Police Administration.* (1) *Public Safety Commissions Established.* The act provides for policy-making civilian Public Safety Commissions at the national, prefectural and municipal levels to administer one or both of the two types of control. This feature properly delineates the chain of command, particularly in the National Rural Police. The latter are administered from Tokyo by a National Public Safety Commission composed of five members responsible to, and appointed by, the Prime Minister with the consent of the Diet for staggered terms of 5 years. Appointees must never have been in career police or career public service, and must not be officers of a political party. Not more than two commissioners may belong to the same party. With the approval of the Diet they may be removed by the appointing authority.

(2) *Administration of the Rural Police.* Administrative control of all National Rural Police is provided by a vertical chain of command which starts with the Prime Minister and descends through the National Public Safety Commission, the headquarters of the National Rural Police, the intermediary level of the National Rural Police Region, the National Rural Police Division (in each prefecture) down to the National Rural Police District and then to the individual policeman himself. However, it must be emphasized that this chain of authority is for administrative control only. On the other hand, the elected governors of the 46 prefectures exercise operational or tactical control over the National Rural Police through the prefectural Public Safety Commission, a body composed of three civilian members within each of the respective prefectures, who are appointed and removed by the governors with the consent of the prefectural legislative bodies.

The law establishes six intermediate regional headquarters of the National Rural Police with each regional director responsible to the Director General in Tokyo. He coordinates the prefectural police divisions in matters relating to administrative control and promotes uniformity of activity and procedure; he maintains close liaison with prefectural governors and police commissions, cooperating with them in consonance with national policies, laws, rules and regulations in carrying out local police problems, but there is no operational chain of

command between the region and the prefecture.

Each prefecture, with the exception of Hokkaido which may have 14, has one National Rural Police headquarters with a complement of one troop of National Rural Police The chief of the prefectural National Rural Police is appointed and administered by the director of the National Rural Police Region

The National Rural Police Headquarters maintains the national police communications system and operates a police education and training system for all police The headquarters in Tokyo embraces the executive office of the National Public Safety Commission and the National Rural Police. The director general is appointed by the National Public Safety Commission, controls the affairs of the headquarters, exercises administrative control of all National Rural Police echelons and supervises a centralized national criminal identification and criminal statistics system and the operation of criminological laboratories

(3) *Administration of the Municipal Police* The autonomous municipal police forces are administered by three-member commissions who have qualification requirements similar to those of the national commission, serve staggered terms of 3 years and whose appointment and removal by the local elected executive must be approved by the local assembly Under their own operational control these commissions may at their discretion secure the assistance of rural policemen whenever the municipalities require it. Liaison and coordination are mandatory between the National Rural Police and municipal police forces at all times

Thus the Japanese policeman, national or municipal, at all levels of government, is answerable directly to the people through an elected official held responsible by his constituents for police behavior. Also, the elected executives must select capable administrators who are acceptable to the legislative branches of government—national, prefectural and local

c *Jurisdiction and Functions* In cases where individual criminal operations have been conducted within the area under the jurisdiction of one type of police force and extend into the area under the jurisdiction of the other type, the mutual extension of authority beyond normal jurisdictional boundaries is authorized This feature conforms to "fresh pursuit" laws found in the United States.

The Police Law limits the police function to the protection of lives, persons and properties of the people, detecting crimes, apprehending suspects and maintaining public safety These are functions recognized throughout the world as normally belonging to the law enforcement agency of a self-governing people Noticeably absent are such extraneous duties as sanitation, inspection, fire protection, census enumeration, administration (as distinguished from enforcement) of economic controls and the former police duty of maintaining surveillance over the private lives of citizens.*

d *Emergency Police Mobilization.* Emergency

*In his letter of September 16, 1947, to the Prime Minister on the subject of police reorganization, the Supreme Commander observed that "in the past one of the ill-conceived aspects of the Japanese police system was the exercise by police officials of numerous administrative functions not related to the task of investigation and apprehension of criminals or the preservation of public order All such functions should be exercised by non-police representatives of the particular ministries having responsibility for such matters and wherever proper should be decentralized to local public entities in accordance with the provisions of the Constitution conferring upon such entities the right to manage their property, affairs and administration . . ." In conformity with the above principle, the administration of economic controls is now a function of the Economic Stabilization Board which employs the police only in case of known violations and after obtaining the necessary warrants of search, seizure or arrest as pro[illegible] by the Constitution and the Code of Criminal Procedure Local and national public health agencies enforce sanitation and health [illegible] ing on the police only to arrest violators. Fire fighting and prevention are now provided locally in all municipalities of over [illegible] are no longer a police or national government function The police have been removed entirely from the labor field and are [illegible] vision is expressly prohibited except only where the criminal laws have been violated or the public peace disturbed [illegible] decentralized to prefectural authorities. The above examples are illustrative but not all-inclusive of former police functions [illegible] by other agencies

control rests in the Prime Minister who, upon recommendation of the National Public Safety Commission, is authorized by the law to proclaim the existence of a state of national emergency for the country as a whole or any part of it. He must designate the area, outline the emergency situation and establish the effective date of the proclamation. When the proclamation is issued he temporarily assumes complete operational and administrative control of any or all police forces in Japan, both National Rural Police and the police forces of local autonomous entities. The proclamation must be ratified by the National Diet within 20 days or it loses its effect. The Prime Minister must rescind this proclamation when the emergency no longer exists, or when so ordered by the Diet.

These restrictions on the Prime Minister's emergency police powers provide an effective safeguard against any attempt to reconcentrate control of the police in the hands of the Central Government on the pretext of a continuing state of emergency.

e. *Appraisal of the Police Law.* The Japanese police organization described above represents a compromise between an ideally decentralized system responsible to the local electorate and the realities of Japan's present domestic and international situation. At this time the tax structure of Japan is such that local entities have not gained complete fiscal autonomy. Since they are not, therefore, able to employ local constabularies the nationally supported rural police force under prefectural operational control is a satisfactory alternative. In addition Japan's demilitarization and the constitutional prohibition against the maintenance of armed forces leave the police as the sole remaining agency for quelling civil disorders. The national rural police force and the provisions for reinforcing it with local police in time of emergency enable the Central Government to cope effectively with domestic disturbances of too serious a nature to be dealt with by local authorities alone.

7. Implementation of the Police Law

After the passage of the law on December 7, 1947, immediate steps were taken to institute trial decentralization on a progressive basis throughout the various prefectures in order to effect a complete reorganization at the end of the transitional period provided for by the law. In this manner the various police headquarters and units which were to be officially established on March 8, 1948 were afforded a preliminary opportunity to practice the new methods of organization and operation before they became mandatory upon complete implementation of the law. This technique of experimental decentralization on a step-by-step basis eliminated most of the difficulties in the process and when the date for final reorganization arrived the plan went into effect quietly and efficiently. So smoothly did this change-over take place that although the reform of the Japanese police system represented the achievement of an important Occupation objective and had vital significance not only to Japan's millions of citizens but in a broader sense to the peace of all Asia it took place almost unnoticed.

An editorial in the *Nippon Times* of March 10, 1948, is illustrative of the reception of the Japanese people to General MacArthur's concept that police power "does not attain its maximum strength through oppressive controls imposed upon the people from above, but rather does it find infinitely greater strength in the relationship of a servant of, and answerable directly to, the people." The editorial referred to is quoted herewith:

"Yesterday the age-old institution of a single nationally-controlled police system finally formally came to an end, and in its place there have come into existence a national rural police force and more than 1,600 independent local police forces. The revolutionary significance of such a change can hardly be exaggerated. And yet, the event passed almost unnoticed by the general public.

"If this lack of popular excitement over the change had been the result of public apathy, it would have been something to worry about, for it would have meant a dangerous indifference to one of the fundamental reforms

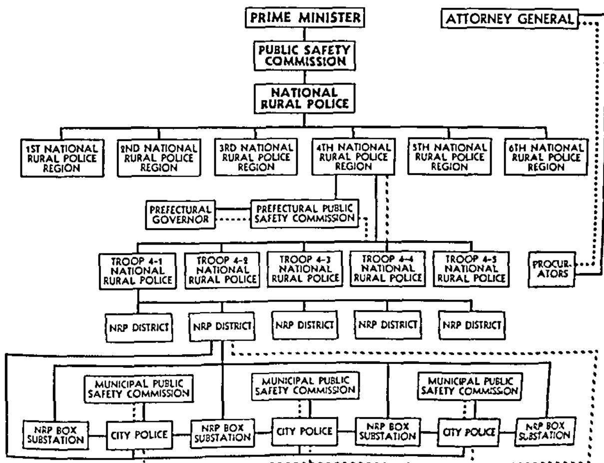
in the democratization of Japan Fortunately, however, the lack of excitement apparently was not the result of any lack of interest. For when the matter of police reorganization was first taken up soon after the surrender, and particularly when the recommendations of the late Commissioner Lewis J. Valentine were released in the Spring of 1946, there was the keenest public interest throughout Japan.

"The quiet way in which the climax of this reorganization was received by the public cannot, therefore be [illegible]

"The smooth way in which the change was effected [illegible]

[illegible] police forces responsible to the local communities are than the autocratically controlled centralized police system of the past, but the selection of the members of the

POLICE REORGANIZATION PLAN



ADMINISTRATIVE CONTROL ——— OPERATIONAL CONTROL ••••••

LIAISON AND COORDINATION ———

EMERGENCY POWERS - - - - - -

ADMINISTRATIVE AND OPERATIONAL CONTROL, EMERGENCY POWERS ———

Public Safety Commissions which will control the police have in the main been wisely made so that the interests of the people will be adequately safeguarded.

"It must be recognized, however, that there are still some imperfections to be ironed out. Although the membership of the Public Safety Commissions in most communities represents an unusually high level of competence and public spirit, it cannot be denied that there are some localities, particularly in backward rural areas, where the local police may fall under the undue influence of local political bosses. This danger must be fully recognized and adequately coped with.

"There are also technical problems to be worked out to the end that there will be efficient cooperation and coordination between the police of the different communities and with the national rural police force. Every possible provision seems to have been taken to this end, but a certain period of practical experience may be necessary before the results become fully satisfactory.

"But in any case, the major aspect of the task of transforming Japan from an autocratic police-state into a democratic community where the police are the servants of the people has been successfully concluded. Quiet as this change has been, it is a change whose significance is all the greater for having been taken in stride."

II. Creation of a Japanese Coast Guard

In September 1947 when Prime Minister Katayama requested General MacArthur's opinion and comments on the Japanese police decentralization plan, the decision was made to divorce water police functions in harbors and bays from the category of normal civil police activities. This decision, coupled with the destruction of the Japanese Navy, and the adoption of a provision in the new Japanese Constitution which prohibited the maintenance of armed forces, virtually deprived the nation of any agency to enforce Japanese laws upon the high seas and in the coastal waters and harbors of Japan.

1. Preliminary Survey Undertaken

Early in the Occupation the Japanese Government requested authority to expand the water police activity of the Japanese civil police forces. Officers of the Public Safety Division of the Civil Intelligence Section, SCAP, seeing the necessity for a detailed study of Japanese maritime safety and law enforcement facilities recommended that an intensive survey of the subject be undertaken. The man chosen for this assignment was Captain Frank M. Meals of the United States Coast Guard who initiated the survey in 1946 and completed it the following year. On the basis of his study, Captain Meals recommended that all Japanese maritime law enforcement and safety activities be combined in a single agency with functions similar to those of the Coast Guard in the United States.

The survey revealed that divided, overlapping and dual, or complete absence of responsibility existed among the 8 national, 3 private, and 40 prefectural and city agencies then charged with the administration and operation of maritime activities. The existing law enforcement agencies were unable to cope with widespread smuggling and illegal entry. Unrestored, improperly maintained navigation aids and unmarked wreckage continuously endangered both Japanese and Allied shipping; widely divergent maritime laws, port regulations and enforcement methods precluded the existence of consistent policy while a majority of the agencies concerned with maritime safety and law enforcement were inexperienced in maritime matters.

While the survey was in progress both Occupation and Japanese authorities were confronted with serious smuggling and illegal reentry problems, particularly in that area of Honshu and Kyushu facing on the Japan Sea. This problem was partially solved in April 1947 when SCAP authorized the Japanese Government to use 38 vessels for the expansion of maritime safety and law enforcement activity. Prior to that time during the Occupation United States Navy vessels had provided the offshore patrol.

2. Maritime Safety Authorities Law Drafted

In the creation of a maritime safety authority the Public Safety Division coordinated preliminary discussions with the Japanese and guided the technical planning phase, basing the handling of the problem on its recommendation of July 1947 that the Japanese Government be *authorized to establish a maritime safety and* revenue marine service which would operate on the high seas and in navigable waters of Japan and which would combine under one agency all government activities related to

a. Enforcement of maritime law

b. Protection of customs revenue and preven*tion of smuggling and illegal entry*

c. Establishment of standards of maritime safety.

d. Maintenance of aids to navigation

e. Inquiry into marine disasters

f. Provision of sea-rescue facilities and other related government maritime safety functions

Government Section's interest in this field was *based upon its responsibility for the reorganiza*tion of national and local organs of government, including the law enforcement agencies, their place in the governmental structure, and the safeguarding of principles of the new Constitution in any reorganization that took place

Early in October 1947 the Japanese Government presented for the approval of the Supreme Commander a draft bill for the establishment of a Maritime Safety Authority of the nature recommended by Public Safety Division. All interested SCAP staff sections concurred on the need of an organization of the type recommended, but Government Section was opposed to the particular bill submitted, principally because *it authorized*:

a. The establishment of an organized, trained, uniformed, armed force possibly forming the nucleus of a navy, without limitation as to size (United States postsurrender policy for Japan authorized adequate civilian police forces but prohibited "the restoration even in a disguised form of any anti-democratic and militaristic activities").

b. Use of ships up to 1,500 tons displacement without limitation as to speed or armament and with authority to operate on the high seas

During the fall of 1947, Public Safety Division and Government Section representatives held a series of joint discussions with the Japanese which resulted in the preparation of a draft bill that received the official approval of the headquarters and was subsequently adopted by the Ashida Government in March 1948 and passed by the Diet on April 15, 1948

3. Provisions of the Maritime Laws[5]

The Maritime Safety Authorities Law establishes a Maritime Safety Board under the Ministry of Transportation for the purpose of preventing, detecting and suppressing violations of the law in harbors, bays, sounds and on the high seas adjacent to Japan. The board consists of those agencies previously located in the *Ministry of Transportation which had mari*time functions and such additional administrative agencies as may be necessary to implement law enforcement maritime functions

The duties of the board include the establishment and enforcement of navigation regulations and safety rules, salvage of human life and cargo at sea, maritime disaster investigations, removal of navigation menaces, licensing and supervision over ships' officers and pilots, anti-smuggling patrol, arrest of criminals at sea, survey of waterways and other hydrographic matters, maintenance of lighthouse and navigational aids, care of ex-naval vessels, minesweeping, and matters of a similar nature

In addition to these specific duties, the board serves as the responsible enforcement agency for any ministry or executive department charged with the administration of particular maritime laws and is subject to the rules and regulations promulgated by them with respect to the enforcement of such laws. This includes,

[5] Appendix H: 35, Maritime Safety Authorities Law, April 15, 1948.

for example, such activities as enforcing customs regulations of the Finance Ministry, and the rules of the Agricultural and Forestry Ministry relative to Japanese fishing craft operating at sea. The board is also required to provide "water taxi" service for all administrative officials on state business.

The law authorizes a maximum strength of 10,000 personnel, most of whom will be uniformed maritime safety inspectors carrying sidearms. The strength is in balance with the estimate of the number of ships that will eventually be employed and is in proportion to the limitation placed on tonnage by the law. When the law was passed only 3,000 persons were engaged in activities which it envisaged and these were assigned to shore duties such as lighthouse tending and hydrographic functions. The increase of 7,000 is a long-range estimate of the number that will eventually be required to restore and operate damaged lighthouses, other aids to navigation, and to man and operate the authorized patrol vessels. Maximum strength will be gradually attained as such vessels become available and no more personnel will be trained in coast guard duties than can be immediately and effectively utilized. To insure control over the training program a provision was inserted in Article 3 of the law stating that "nothing in this law is to be construed as an authorization for the employment of additional personnel, over and above those presently employed, to carry on the functions and activities enumerated in this law until funds are provided in the budget."

The act contains additional safeguards against utilizing the Coast Guard as the possible nucleus of a restored Japanese navy.

a. It specifies that "nothing in this law shall be construed so as to permit the Maritime Safety Board or its personnel to be trained or organized as a military establishment or to function as such." Armed vessels are not authorized.

b. Vessels are limited to 125 in number, harbor craft excluded, and to 50,000 gross tons total tonnage. No individual vessel is to exceed 1,500 tons, but some ships of this displacement will be required for the purpose of installing and maintaining heavy buoys and lighthouse and hydrographic equipment. As to the types of vessels which made up the 125 mentioned above, it was determined that, in view of the practical considerations involved in attempting to forecast what shipping will be available to Japan in the future, the exact type should not be specified in the law.

c. Vessels are also limited to those unable to exceed 15 knots in speed.

d. The board and all its personnel are appointed, promoted, disciplined, dismissed and otherwise managed under, and in conformity with, the provisions of the National Public Servants Law.

e. The board has no connection with the National Public Safety Commission, but the law does provide for liaison and coordination with the police and permits the mutual extension of assistance when requested. It should be noted that the Japanese civil police forces have no jurisdiction on waters outside their normal boundaries. The National Rural Police are even prohibited from having boats.

f. Operation on the high seas is limited to "the high seas adjacent to Japan." In conformity with the concept of international law that a nation enforce its laws on vessels of its registry operating on the high seas—that is, that the law of the waters in which the vessel is sailing is the domestic law of her country—it was decided that the determination of the distance from the Japanese mainland within which these vessels should eventually be authorized to operate in order to enforce domestic law is an issue which will have to be settled later. Accordingly, terminology was used in the act that will permit reasonable interpretation.

Any further safeguards not appearing in the law, which are deemed necessary in order to comply with postsurrender policy, may be invoked by SCAP directive. It is the purpose of the law to establish a reasonable and workable

set of regulations for operations of a maritime safety service both during and after the Occupation. Even though it is presently premature to authorize unrestricted operation of Japanese vessels upon the high seas, the law advisedly permits limited operation on the high seas adjacent to Japan because, as long as the Occupation continues, that authority as well as all domestic law, is subject to control by the Allied Powers

By assisting the Japanese Government to maintain law and order on its own authority in its own coastal waters and by preparing it for the assumption of this responsibility under international law the Maritime Safety Authorities Law attempts to meet the situation which will exist after the Occupation In creating an agency which is urgently needed now it also established a blueprint for the future.

III. The Growth of Political Morality

1. Significance of the Hoarded Goods Probe

In the search for hoarded military supplies and in the investigation of political corruption with which it was closely allied there could be seen encouraging signs that in postwar Japan both appointed and elected officials were beginning to recognize their responsibility as servants of the people. The illegal disposition of Japanese military supplies and stockpiles both in the vast amount of wealth involved and in the extent of its political ramifications was unquestionably the greatest scandal to be uncovered during the Occupation. In the course of their efforts to grapple with it the procurators changed their basic concept of their place in the legal and law enforcement system of Japan. At first they adhered to the traditional limitations of the procuratorial system and concerned themselves only with the obvious criminal aspects of the hoarded goods fraud. Later as further investigation revealed the widespread ramifications of the scandal and indicated that the corruption which it nurtured extended to high places in the government the procurators played an increasingly predominant part in exposing this threat to the national welfare Following the example of district attorneys in the United States they no longer waited for police action but with increased personnel and appropriations they initiated and conducted their own investigations. Encouraged by SCAP the procurators, once themselves mere officials of the central bureaucracy, now dared to invade the highest circles of government in their determination to protect the people's interests, and when they had secured sufficient evidence asked for and obtained the indictment of the Deputy Prime Minister himself

No less conscious of the public responsibility were those members of the Diet whose work on the Hoarded Goods Committee paralleled and supported that of the procurators Primarily concerned with the corruption which resulted from the use of hoarded supplies for political purposes this committee focused national attention on the problem Furthermore, on the basis of perjured testimony before the committee the procurators were able to bring charges against prominent politicians who were deeply implicated in the scandal

2. Background of the Scandal

The great hoarded goods scandal had its origin in the uncertain and chaotic days when Japan was suing for peace but had not yet formally surrendered. Faced with the fact of defeat the cabinet of Admiral Suzuki met hurriedly on August 14, 1945, and agreed upon the hasty disposal of all war goods possessed by the Army and Navy. The cabinet decision specifying that these goods which included food, clothing and raw materials should be distribu-

ted to local government agencies and control associations was implemented by secret military orders issued on August 15, 17, and 23. Although the Supreme Commander's General Order No. 1 which was handed to the Japanese surrender mission at Manila on August 20 included the provision that all such supplies were to be preserved intact, the secret disposal orders remained in effect until rescinded by the Higashikuni cabinet 8 days later.[6] By that time, according to Japanese estimates, approximately 70 percent of the supplies formerly held by the Army and Navy had been dispersed as a result of failure to comply with General Order No. 1. Those goods which had not been disposed of were surrendered to the Occupation forces shortly after their arrival in Japan. Legal title to goods of this sort immediately vested in the Allied Powers at the moment of surrender.

As early as September 24, 1945, the Japanese Government was notified that surrendered goods, including scrap iron, suitable for civilian relief purposes and for use in the restoration of the Japanese economy would be returned to the Japanese Government for those purposes only.[7] At the same time the government was directed to maintain adequate records of property so received in such form that its disposition could be traced to the ultimate consumer. The Japanese Government was also charged with providing adequate protection and maintenance of such stocks and for keeping detailed records indicating the disposition of funds accruing from the sale of these items. The materials and goods returned to the Japanese Government under this program were estimated by a Diet investigation committee to have had a value of approximately 100,000,000,000 yen.

When it became evident early in 1946 that large-scale attempts had been made between the dates of August 14, 1945, and September 2, 1945, secretly to dispose of huge quantities of former military supplies, the Japanese Government was notified that such actions were contrary to the spirit of the Potsdam Declaration and the Shidehara Government was directed to account for the goods so diverted and to supply the headquarters with the names of the officials responsible therefor. The Government replied that every effort would be made to supply the desired information but pointed out that the previous hasty scattering of supplies by the surrender government made rigid control and accurate statistical accounting difficult. Various reports have been submitted to the headquarters listing the equipment and materials on hand at the termination of the war, amounts sold after August 14, 1945, and the balance surrendered to the Occupation forces, but since they have relayed only in fragmentary form data derived from the various local agencies of distribution consolidation into one comprehensive report was a practical impossibility. It is worthy of note that these reports list such equipment as trucks, cars, tents, steel and lumber as actually having been turned over to the Allied forces in substantial quantities, while the more readily concealable or movable materials such as fuel, clothing, cloth, leather, fibers, yarns and foods were reported to have been entirely sold or otherwise disposed of to prefectural offices, control associations and like agencies. This inability of the Japanese Government to render a complete accounting was not surprising in view of the methods employed by government officials from the very beginning of the Occupation in handling former stock piles of the armed forces—methods characterized by unrecorded lump transfers to local entities, quasi-public bodies and private concerns and by loose delegation of responsibility all along the line.

3. Role of the Public Procurators

In July 1947 it was reported that large sums derived from the sale of hoarded military sup-

[6]Appendix B: 1a, General Order No. 1. This Order was reissued as SCAP Directive No. 1 on September 2, 1945.

[7]Appendix E: 6, Materials, Supplies and Equipment Received and to be Received from Japanese Armed Forces, SCAPIN 53, September 24, 1945.

plies in the black market were being used to corrupt political parties and to bribe public officials. It was further charged that the proceeds from these transactions had been used to finance campaigns for the House of Representatives in the 1946 and 1947 elections Recognizing that this condition posed a threat to the entire program of political reform which SCAP had undertaken the Chief of the Government Section suggested to the Procurator General of Japan that an investigation of hoarded and illegally handled ex-military goods be initiated.

a. *Investigation of the Seko Case* The investigation was started by inquiring into the activities of Koichi Seko, a Liberal Party House of Representatives member whose name was constantly in the Japanese press at that time as a result of an independent investigation in the hoarded goods field that he had initiated while concurrently serving as Vice Home Minister and of his allegations that large quantities of illegally hoarded goods were still flowing into the black market and impeding economic recovery. As vice chairman of an informally appointed Cabinet committee headed by Finance Minister Ishibashi (later purged), and with questionable authority he had issued approximately 140 "official" orders over his signature concerning the disposition of such goods at a time when he had no official status in the executive branch of the government

The activities of Mr Seko which received the widest publicity in the press and on the radio had to do with a "Seko Order" ostensibly signed by him and purporting to release 600,000 army uniforms to agricultural and mining associations throughout Japan on payment of 20,000,000 yen by the latter. A part of the money was paid, but no uniforms were delivered. Four unsuccessful candidates to the Diet were also involved and were indicted for their part in defrauding the agricultural associations. One of them, Ikutaro Nakasone, is alleged to have given 2,500,000 yen to Koroku Tsuji, the Liberal Party "wirepuller" who has an ultra-nationalistic and underground background and who, under questioning, admitted making large campaign contributions to the Liberal Party Also, a part of this money is alleged to have been used to build a house for Ichiro Hatoyama, the well-known purgee and former president of the Liberal Party To date the procurators have been unable to obtain sufficient evidence in this case to obtain indictments other than the four mentioned above

Shortly after, at the Prime Minister's request, the Diet for the first time permitted the arrest and indictment of one of its members while the legislature was in session when the Procurator General charged that Susumu Hara, a Liberal Party Diet member, had secured funds indirectly derived from the existence of hoarded goods when he allegedly defrauded the National Federation of Repatriates out of some 2,000,000 yen with the understanding that he would procure from the government calico cloth for the use of repatriates

b *Investigation of the Arms Disposal Committee* One of the most scandalous offenses alleged to have occurred in connection with the disposal of ex-military supplies was apparently perpetrated by the irregularly created Arms Disposal Committee, ostensibly established for the purpose of functioning as the Government s agent in the sale and distribution of surrendered goods and materials returned to the Government by the Occupation Forces to relieve want and distress This "committee was created by an agreement concluded between the head of the Investigation Bureau of the Home Ministry and Takeshi Komatsu of the Japan Steel & Tube Co , sometime during 1945, and illegally ratified by the Home Ministry in a formal contract dated May 16, 1946. The "committee actually constituted a profit-making syndicate of five Zaibatsu companies—Japan Steel & Tube Co , Japan Iron & Steel Co , Furukawa Electric Co , Sumitomo Metals Co , and Kobe Steel Works —and had a capital of 1,000,000 yen. Its contract did not provide for open bidding or any method for payment or delivery. Rather, the

quate records, particularly of war goods which were returned to the Japanese by the Allied Forces.

In this interim report, the committee reached the following conclusions:

b. *Recommendations of the Kato Committee.*

(1) The Suzuki Cabinet's resolution of August 14, 1945, authorizing the secret disposal of government property was an act of bad faith; the Higashikuni Cabinet failed to rescind this act but actively carried out its purposes until August 28 (8 days after it had received General Order No. 1 from SCAP in Manila which made it clear that the equipment and supplies of the Japanese Armed Forces were to be held intact); subsequently, no effective measures were taken to recover the assets thus dissipated.

(2) The disposal of war materials after the surrender was tainted with favoritism and fraud.

(3) Local governments and police officials interfered with investigations initiated by the government and conspired to legalize fraudulent transactions; even the "special goods" returned to the Japanese Government by the Allied Forces under the disease and unrest formula, were improperly distributed and no accounting was rendered.

(4) Goods were still in concealment, possibly including arms and munitions, held on the theory that the holders may escape detection until after the Occupation.

(5) Legislation for uncovering hoarded goods was inadequate.

(6) Whatever agency might assume the task of uncovering goods still hidden should be granted adequate authority.

(7) The Diet should confine itself to providing adequate legislation and undertaking legislative investigations of individuals and executive agencies, and the executive branch of the government should enforce the laws.

Based on the above conclusions and in close cooperation with representatives of Government Section, the chairman of the House Investigating Committee drafted an oath and testimony law which passed the Diet on December 9, 1947, and enabled the committee to subpoena records and witnesses and required the latter to testify under oath for the first time since the establishment of legislative committees in the Diet.

c. *Second Diet Hoarded Goods Committee.* With the expiration of the First National Diet on December 9, 1947, the tenure and authority of the first committee ended. No marked accomplishments were attained by this committee. A House resolution recreating the nonpartisan special committee for the same purpose was drafted with the aid of Government Section and was adopted by the House of Representatives on December 11, 1947.[9] It armed the committee with sweeping investigatory powers as well as an appropriation of 250,000 yen.

According to the Speaker of the House, the passage of the resolution stunned Zaibatsu business interests and leading politicians including both Diet members and lobbyists who had associated in furthering the activities of "big business" interests.

On convocation of the Second National Diet on January 21, 1948, the Speaker appointed the members to the new committee with Mr. Kato retaining the chairmanship. This was accomplished after long consultations with representatives of all the major political parties in a not too successful effort to recruit a committee which would place public welfare above party interests and bring an end to the postwar era of corruption in government-business relationships.

Mr. Kato retired from the chairmanship of the committee when he accepted the post of Labor Minister in the Ashida Cabinet formed on March 10, 1948. His successor, Mr. Unjiro Muto, was not appointed until April 3, 1948.

Equipped with the power to examine witnesses under oath the second Diet Hoarded Goods Committee, under Mr. Muto's chair-

[9]Appendix E: 10, House of Representatives Resolution Regarding Committee on Hoarded Goods, December 11, 1947.

manship, accomplished more during the first month of its existence than the predecessor committee had during its entire tenure The new committee devoted its efforts during that period to questioning Diet members and unsuccessful candidates as to the source of campaign funds allegedly derived from irregular transactions in hoarded goods. The examination of witnesses was based chiefly upon testimony previously given in court incidental to the prosecution of the Seko Army Uniform Case, and also upon the results of investigations made and statements previously received from the same witnesses by the procurators as to the source of their campaign funds Some forty witnesses were subpoenaed during this period by the committee. Since perjury was not customarily considered a serious offense in Japan, the testimony of many witnesses as to the source or payment of campaign funds was inconsistent with official procuratorial and court records Wide public interest was directed towards these proceedings in the Diet as the result of splendid coverage by the Japanese press. The Attorney General and the Procurator General of Japan, recognizing that perjury by witnesses before the Diet Committee had been the rule rather than the exception, instituted criminal proceedings in the courts against those alleged to have given false testimony

The first arrest for perjury before the Diet committee was made on May 2 when Ichiro Kono, a purged leader of the Liberal Party and an ex-Diet member, was taken into custody for denying his receipt and disbursement of campaign funds derived from hoarded goods transactions. This significant development was immediately followed by the filing of charges against several active members of the Diet for similar falsification The effect of this action in party circles and upon the public was characterized by a well-informed Japanese political writer who stated that the possibility of the courts meting out 10-year jail sentences under the new Diet Oath and Testimony Law would necessarily result in a revolutionary concept of the formerly innocuous crime of perjury in Japan and will no doubt accomplish much toward reorienting Japanese in all strata of society to the basic principle that successful democracy thrives only through government by law instead of government by men.

As early as April 30, Chairman Muto in his first interim report of the new committee's activities, pointed out the serious implications of the conflicting testimony mentioned above and recommended to the Diet the enactment of necessary laws to stamp out political corruption by the use of secret funds

d *House Resolution of Confidence.* When at the end of May it became apparent that Deputy Prime Minister Suehiro Nishio of the Social Democratic Party was involved in the scandal, the investigation committee was faced with necessity of indicting one of the most powerful figures in the government When the issue came to a vote, however, the committeemen under pressure from their respective parties voted along partisan lines, with the government parties voting against the indictment and the opposition for it Though for a while prevented by party loyalties from taking definitive action as indicated by the evidence revealed at the hearings, the committee later took action to insulate itself against such influences in the future As a result, the House of Representatives by resolution on June 22, 1948, expressed its confidence in the committee and resolved that political parties should not influence the actions of their members serving on the committee It was further resolved that the membership of the committee should not be determined by party but in accordance with the regulations of the House [10]

This action by the House of Representatives, itself subject to the stresses and strains of political party interests, betokens a growing sense of public responsibility and is one of the most encouraging events in the development of representative government in Japan.

[10] Appendix E 13, House of Representatives resolution on character of hoarded goods committee, June 22, 1948.

quate records, particularly of war goods which were returned to the Japanese by the Allied Forces.

In this interim report, the committee reached the following conclusions:

b. *Recommendations of the Kato Committee.*

(1) The Suzuki Cabinet's resolution of August 14, 1945, authorizing the secret disposal of government property was an act of bad faith; the Higashikuni Cabinet failed to rescind this act but actively carried out its purposes until August 28 (8 days after it had received General Order No. 1 from SCAP in Manila which made it clear that the equipment and supplies of the Japanese Armed Forces were to be held intact); subsequently, no effective measures were taken to recover the assets thus dissipated.

(2) The disposal of war materials after the surrender was tainted with favoritism and fraud.

(3) Local governments and police officials interfered with investigations initiated by the government and conspired to legalize fraudulent transactions; even the "special goods" returned to the Japanese Government by the Allied Forces under the disease and unrest formula, were improperly distributed and no accounting was rendered.

(4) Goods were still in concealment, possibly including arms and munitions, held on the theory that the holders may escape detection until after the Occupation.

(5) Legislation for uncovering hoarded goods was inadequate.

(6) Whatever agency might assume the task of uncovering goods still hidden should be granted adequate authority.

(7) The Diet should confine itself to providing adequate legislation and undertaking legislative investigations of individuals and executive agencies, and the executive branch of the government should enforce the laws.

Based on the above conclusions and in close cooperation with representatives of Government Section, the chairman of the House Investigating Committee drafted an oath and testimony law which passed the Diet on December 9, 1947, and enabled the committee to subpoena records and witnesses and required the latter to testify under oath for the first time since the establishment of legislative committees in the Diet.

c. *Second Diet Hoarded Goods Committee.* With the expiration of the First National Diet on December 9, 1947, the tenure and authority of the first committee ended. No marked accomplishments were attained by this committee. A House resolution recreating the nonpartisan special committee for the same purpose was drafted with the aid of Government Section and was adopted by the House of Representatives on December 11, 1947.[9] It armed the committee with sweeping investigatory powers as well as an appropriation of 250,000 yen.

According to the Speaker of the House, the passage of the resolution stunned Zaibatsu business interests and leading politicians including both Diet members and lobbyists who had associated in furthering the activities of "big business" interests.

On convocation of the Second National Diet on January 21, 1948, the Speaker appointed the members to the new committee with Mr. Kato retaining the chairmanship. This was accomplished after long consultations with representatives of all the major political parties in a not too successful effort to recruit a committee which would place public welfare above party interests and bring an end to the postwar era of corruption in government-business relationships.

Mr. Kato retired from the chairmanship of the committee when he accepted the post of Labor Minister in the Ashida Cabinet formed on March 10, 1948. His successor, Mr. Unjiro Muto, was not appointed until April 3, 1948.

Equipped with the power to examine witnesses under oath the second Diet Hoarded Goods Committee, under Mr. Muto's chair-

[9] Appendix E: 10, House of Representatives Resolution Regarding Committee on Hoarded Goods, December 11, 1947.

manship, accomplished more during the first month of its existence than the predecessor committee had during its entire tenure The new committee devoted its efforts during that period to questioning Diet members and unsuccessful candidates as to the source of campaign funds allegedly derived from irregular transactions in hoarded goods The examination of witnesses was based chiefly upon testimony previously given in court incidental to the prosecution of the Seko Army Uniform Case, and also upon the results of investigations made and statements previously received from the same witnesses by the procurators as to the source of their campaign funds. Some forty witnesses were subpoenaed during this period by the committee. Since perjury was not customarily considered a serious offense in Japan, the testimony of many witnesses as to the source or payment of campaign funds was inconsistent with official procuratorial and court records. Wide public interest was directed towards these proceedings in the Diet as the result of splendid coverage by the Japanese press. The Attorney General and the Procurator General of Japan, recognizing that perjury by witnesses before the Diet Committee had been the rule rather than the exception, instituted criminal proceedings in the courts against those alleged to have given false testimony.

The first arrest for perjury before the Diet committee was made on May 2 when Ichiro Kono, a purged leader of the Liberal Party and an ex-Diet member, was taken into custody for denying his receipt and disbursement of campaign funds derived from hoarded goods transactions This significant development was immediately followed by the filing of charges against several active members of the Diet for similar falsification The effect of this action in party circles and upon the public was characterized by a well-informed Japanese political writer who stated that the possibility of the courts meting out 10-year jail sentences under the new Diet Oath and Testimony Law would necessarily result in a revolutionary concept of the formerly innocuous crime of perjury in Japan and will no doubt accomplish much toward reorienting Japanese in all strata of society to the basic principle that successful democracy thrives only through government by law instead of government by men.

As early as April 30, Chairman Muto in his first interim report of the new committee's activities, pointed out the serious implications of the conflicting testimony mentioned above and recommended to the Diet the enactment of necessary laws to stamp out political corruption by the use of secret funds

d *House Resolution of Confidence* When at the end of May it became apparent that Deputy Prime Minister Suehiro Nishio of the Social Democratic Party was involved in the scandal, the investigation committee was faced with necessity of indicting one of the most powerful figures in the government When the issue came to a vote, however, the committeemen under pressure from their respective parties voted along partisan lines, with the government parties voting against the indictment and the opposition for it Though for a while prevented by party loyalties from taking definitive action as indicated by the evidence revealed at the hearings, the committee later took action to insulate itself against such influences in the future As a result, the House of Representatives by resolution on June 22, 1948, expressed its confidence in the committee and resolved that political parties should not influence the actions of their members serving on the committee It was further resolved that the membership of the committee should not be determined by party but in accordance with the regulations of the House [10]

This action by the House of Representatives, itself subject to the stresses and strains of political party interests, betokens a growing sense of public responsibility and is one of the most encouraging events in the development of representative government in Japan.

[10] Appendix E 13, House of Representatives resolution on character of hoarded goods committee, June 21, 1948.

SECTION X

Popular Elections

I. Introductory Statement

The national elections held in April 1946 and in April 1947 were notable milestones of Japan's march toward democracy under the Occupation. The response of the people of Japan to the opportunities afforded them in these elections vindicated the faith placed in their desire and ability to advance toward self-government.

Seldom in history have the people of a nation had the opportunity, in such brief compass of time and by such a peaceful process, to upset generations of history and tradition in the manner of selecting those who were to govern over them. Certainly never before in Japan had the opportunity been presented for virtually the entire adult population—male and female—to participate in the election of not only the members of the so-called Lower House of the Diet but also the members of the Upper House, the chief executives of their prefectural, city, town, and village governments and the members of the legislative bodies of those local entities.

The Potsdam Declaration outlined the major objectives of the Allied Occupation. Among these were the requirements that "the Japanese Government shall remove all obstacles to the revival and strengthening of democratic tendencies" and that there shall be "established in accordance with the freely expressed will of the Japanese people a peacefully inclined and responsible government."

The Occupation early established the policy of using the established Japanese governmental machinery to carry out Occupation objectives, affairs of government, and, above all, to develop indigenous political and administrative machinery for democratic reconstruction. If democracy was to be fostered in Japan it would be necessary for the people through their representatives in the Diet to settle the vital problems of governmental, political, social and economic reform toward democratic ends. But the Diet in existence at the outset of the Occupation was obviously unfit to serve as an instrument for the democratic reconstruction of Japan. More than 80 percent of its membership had been selected by General Tojo and the Imperial Rule Assistance Association in the 1942 election. Its members, identified with ultranationalistic and imperialistic policies, lacked the confidence of the bulk of Japanese people, especially those who were eager to rebuild the country along peaceful democratic lines.

There were many cogent reasons for the creation of a fresh legislative body:

1. To eliminate from public life those who were tainted with war guilt. Nearly the entire

membership of the existing Diet belonged to this category.

2. To dispel confusion resulting from the failures of discredited political leadership.

3. To introduce new political figures into responsible public life.

4. To reflect current political thinking of the Japanese people.

5. To establish the basis for executive authority responsible to the people.

6. To provide means for legislative decision on major issues affecting the livelihood of the entire Japanese people and the future structure of the Japanese community.

7. To provide a forum for political expression and a constructive outlet for long-repressed political energies.

8. To provide the legislation required for the implementation of SCAP directives.

9. To avoid the use of the undemocratic method of government by imperial rescripts and ordinances.

The national election conducted on April 10, 1946, was indicative of the unmistakable temper of the people in general in favor of democratic procedures. The leaders selected were the men who would draft the new Constitution for the Japanese nation. Therefore, the election can be regarded as an initial effort to develop the "political wilderness" of Japan

More important in this respect, however, were the subsequent series of elections held throughout April of 1947 in which every elective public office in the land was at stake—local and national, legislative and executive. Merely to say that the first public officials to serve under the new Constitution, which went into effect on May 3, 1947, were selected in these elections would stress their significance sufficiently. But at least five other reasons combined to augment their abiding importance. For the first time the Japanese people voted for the members of a House of Representatives newly become "the highest organ of the state", the first elections for the House of Councillors, the first popular elections for local chief executives, the first popular elections for effective local assemblies, and the first elections of any type supervised by representatives of the electorate rather than by the government itself

II. Report of 1946 Election

Japan's first postwar election was conducted on April 10, 1946. Nearly three-fourths of the qualified voters went to the polls, a high percentage considering the time and circumstances. Contrary to expectations, women turned out in large numbers

The conduct of the election was in the hands of the Japanese Government. Occupation forces carefully observed campaign and election procedures throughout the country but refrained scrupulously from any kind of interference. No disorder was reported on election day and the number of irregularities was negligible

1. Precautions to Insure Fair Election

On April 10, 1946, 26,000,000 voters went to the polls to choose a new House of Representatives. The election under the new electoral law once having been authorized,* it was important that the spirit as well as the letter of the law should be observed. To that end the Japanese Government plugged a loophole in the law by promulgating Imperial Ordinance No 96 placing "third party" campaign expenses under the limitations imposed upon each candidate's campaign expenditures, thus insuring

*This law consisted of extensive revisions of the 1925 Law for the Election of Members of the House of Representatives (as amended in 1926, 1934 and 1945)."

equal treatment of those with and those without wealthy financial supporters. Next, through Imperial Ordinance No. 101, implementing SCAP's purge directive of January 4, 1946, relating to political associations, all political parties were ordered to register and to report substantial contributions, with names and addresses of their donors.[1] By ordering these reports open for public inspection and setting the limit of a "substantial contribution" as low as ¥1,000, the public was assured complete information concerning the major financial backing behind the parties. The press made ample use of this information.

A third measure was effected through Home Ministry Ordinance No. 11, by which all parties and candidates engaging in the election campaign were made to report weekly, for public inspection, all receipts and disbursements over ¥100 during the whole period of the campaign. Wide publicity was given to these reports and very revealing data were thereby brought into the light of public criticism.

Still another measure was taken to insure a fair election. This was the prohibition, issued to prefectural governors, of any precensorship of the election bulletin, an official publication containing program statements and biographies of candidates, which were distributed to all registered voters. "Editing" of each candidate's personal statement to the voting public was thereby eliminated, and the voters received an "unexpurgated" version of the candidates' views.

Finally, the campaign and the election itself were brought under the close personal observation of the Occupation forces by a directive which provided surveillance by troops in the field. Thus by every possible means, it was made certain that violations of any nature mitigating against a free and fair expression of the popular will would be brought immediately to SCAP's attention. The instructions issued to the Commanding General, Eighth Army stressed this injunction: "Remember that this is a Japanese election under a Japanese... Actual policing will be done by Japanese... ficials, parties, candidates, newspapers and... vate individuals. The charge that this ele... is being conducted under the threat of Y... bayonets must not be permitted to arise... case should you interfere with the admi... tive authority of Japanese officials or th... the use of force. Your duties are only to... serve, refer violations to Japanese officials,... report to higher authority. . . . Assurance... free and untrammeled election is a maj... sponsibility of the Occupation forces. ... activities will contribute substantially to... result."

2. Activities by Occupation Forces

a. *Observing and Reporting*... Government Section had the... developing and carrying out... ing and reporting on the ele... were Eighth Army Military ... or detachments located at pre... and other key points in each prefecture... these teams did not have sufficient pers... adequately to cover their respective ar... jurisdiction, it was decided to augment military government teams by personne... the tactical units and from the Counter I... gence Corps teams in the field.

Five orientation meetings were conduc... the Government Section in various pa... Japan. These meetings were held in S... Kure, Kyoto, Tokyo, and Sendai. On ... 18, representatives of Government Sectio... with representatives of all military gover... teams and members of the major tactical... including Eighth Army, British Com... wealth Occupation Forces, I Corps, IX ... 1st Cavalry Division, 11th Airborne Di... and the 2d Marine Division. At this ti... units were provided with sufficient co... the prepared materials for distribution ... concerned, and the instructions were dis... in full detail.

[1]Appendix B: 5c, Abolition of Political Parties, Associations, Societies, etc., Imperial Ordinance 101, February 23, 1946.

Each military government team was directed by corps to prepare complete detailed plans indicating the number of officers that could be assigned to observe and report on the election, the extent of coverage of the prefectures, the number of tactical officers and enlisted men that would be required to augment their forces, and the disposition of all forces in the field. These plans, which were completed for all prefectures not less than 15 days prior to the election, were reviewed by representatives of the Government Section.

The political campaign and the election were observed and reported in all prefectures in Japan. Field forces representing military government and tactical units or CIC operated [illegible] political campaign and election, and

8. To provide [illegible] throughout each prefecture in [illegible] implementation o[illegible]opulation spread, with the

9. To avoid [illegible] [illegible]erations of location of typical [illegible] method of gover[illegible] areas, and types of communities [illegible] ordinances, such as agricultural, fishing, and [illegible]

The nation [illegible] the case of Yamagata prefecture plans were changed at the last moment to extend coverage to a small community where possible violations were reported. The plan for each prefecture was adjusted so that a maximum coverage could be obtained, using the personnel available and recognizing the differences in terrain and other local characteristics.

b. *Observation During the Campaign.* During the campaign each military government team and tactical unit was charged with definite responsibilities. In every prefecture an initial contact was made with the prefectural governor, who was advised that the Occupation forces would observe and report on the election, maintain an attitude of impartiality and expect the Japanese Government and officials to bear the responsibility [illegible] and [illegible] election. [illegible] country [illegible] [illegible] officers [illegible] observe [illegible] [illegible]

Care was taken [illegible]

[illegible] of January 4, 1946 [illegible]

In practically all [illegible]

[illegible]

The Occupation [illegible]

[illegible]

tion with the election officials. Observers checked to make sure that the names of all candidates were posted in front of the polling place as required by law and that the regulations concerning election posters were not being violated. They also noted the procedure followed from the time the voter entered the polling place until he deposited his ballot in the ballot box and left the polls. Methods of election officials in identifying voters were noted. The actions of voters and officials within the polling place were scrutinized to see that secrecy of the ballot was not violated.

After the balloting Occupation forces checked to ascertain whether adequate provision had been made by the Japanese authorities to safeguard the ballots between the closing of the polls and the counting of votes. There were no reported instances of attempts to tamper with the ballot boxes. During the counting, Occupation forces made frequent inspections.

d. *Conduct of the Election.* The consensus of the Occupation forces who observed the election was as follows:

"The arrangements by the Japanese officials for handling voters in the polling places were worked out in great detail and remarkably efficient. The Japanese people were orderly at the polls; there were no recorded instances of misconduct or disorder. Women, voting for the first time, appeared to have no difficulty with the voting procedure."

In sharp contrast to the police control formerly exercised in Japanese elections, the police were conspicuous by their absence. There were no reports of interference by the police in any prefecture, nor of intimidation of voters at or near the polls. No charges of indirect pressure on voters by employers, social leaders, cultural or economic agencies were brought to SCAP's attention by any parties or defeated candidates.

Some observers reported that the Japanese system of registration was unsatisfactory. Much time was involved in checking on voters who had mislaid their identification cards, owing to the lack of system in keeping records. Complaints were heard of the lack of a printed ballot, making it necessary for voters to write in the names of the candidates for whom they were voting. The write-in ballot is traditional in Japan and was defended on the ground that it tended to prevent corrupt practice and also served as a mild literacy test.

e. *Omissions from Electoral Lists.* Charges appeared in the press that large numbers of voters had been deprived of their votes through failure on the part of authorities to place their names on the official registration lists. These charges were immediately investigated by the Home Ministry. Preliminary reports indicated that less than 1 percent of the electorate was disfranchised in this manner. In most cases, omissions were due to the voters' change in residence since the previous November; some were due to clerical errors. The greatest number of complaints came from cities such as Aomori and Sendai where there had been a heavy displacement of population owing to destruction by bombing.

The Home Ministry made a thorough investigation of all cases reported. Evidence revealed that the number disfranchised was too small in any way to have affected election results.

3. General Analysis of the Election

a. *Number of Parties or Candidates.* Competition for seats in the Diet was keen, with nearly six times as many candidates registered as there were seats to be filled.

On April 3, when the registration closed, 2,781 candidates had entered the race; of these 5 had died and 79 had withdrawn, leaving 2,697.

Distribution by parties was as follows:

Liberal	482
Progressive	373
Social Democratic	330
Communist	142
Cooperative	93
Minor parties	566
Independents	795
Total	2,781

Eighty-two of the candidates were women. Ages of candidates ranged from 25 to 87. Can-

didates who had previously served in the Diet numbered only 147; the predominance of "new faces" reflected the results of the purge Small parties, local and national, numbered 251

b. *Campaign Activities.* As election day approached campaign activities increased in tempo. Parties and candidates appealed to the voters by means of public meetings, radio broadcasts, campaign literature, personal solicitation and other methods.

During the last 3 weeks of March in the Tokyo area 2,215 political meetings were reported with a total attendance of 169,281 In allocating radio time on both national and local stations care was exercised to make a fair distribution among the parties and candidates Few instances of disorder were reported at campaign meetings

c. *Press Coverage* During the weeks preceding the election, political discussion dominated the press The progress of the campaign, both nationally and in the prefectures, was reported in detail. Political writers vied with one another in attempting to predict the outcome

Political commentators almost unanimously expressed serious concern over the possibility of wide abstention from voting This prediction resulted from general preoccupation throughout Japan with the urgent problem of obtaining food, clothing, and shelter It was pointed out that most candidates were new and unknown figures who would bring a fresh point of view to bear upon the serious problems facing Japan

Most newspapers refrained from supporting individual parties or candidates, although an undercurrent of sympathy for the Social Democrats could be detected in metropolitan journals. The press in general analyzed the campaign as a whole, displaying a keenly critical attitude and exhorting the voters to do likewise

d. *Efforts to Stimulate Voting* The press exerted itself vigorously to stimulate public interest in the election It repeatedly admonished the citizens to vote and to vote intelligently.

Yomiuri declared that the world was watching the Japanese election. "It is all right for us to criticize the Government," wrote *Mainichi*, "but at the same time we must endeavor to solve problems by our own efforts. This election is the first step toward acting for ourselves "

Various devices were used to stimulate interest in the election. The newspaper *Asahi* sponsored a meeting on March 23, 1946, at which representatives from the five major parties were invited to speak Attendance at this meeting was estimated at 4,000 *Yomiuri* conducted a straw vote in which 25,000 readers participated Newspaper space was devoted to explaining the mechanics of registration and of voting under the new restricted plural voting system.

The Japanese Government, especially the Ministries of Education and Home Affairs, conducted a campaign to stimulate voting Wide use was made of handbills, printed instructions on voting procedure, pamphlets, school posters, and motion pictures Meetings of neighborhood associations were held to explain the plural voting system Through these associations and other means the idea was fostered that failure to vote would be a national disgrace

On April 8, Prime Minister Kijuro Shidehara issued a statement urging all citizens to exercise their franchise On April 9, the day preceding the election, Shidehara again exhorted the voters over a nation-wide radio hook-up, saying that world attention was focused on the election as a starting point in the democratization of Japan

e *Campaign Expenditures* Survey of the campaign fund reports submitted by all political parties to the Home Ministry revealed that, except for the Social Democrats, the expenditures of each party were roughly proportional to the number of its candidates The average sums spent per candidate ranged from ¥2,300 for the Progressives to ¥4,000 for the Liberals. The Social Democratic Party, however, spent an average of but ¥415 per candidate.

When broken down to show the efficiency with which money was spent, the picture shows wider variations. Each Diet seat cost the successful Liberal Party an average of ¥13,500, as compared to the Social Democratic expense of ¥1,500 per seat. The Progressives spent ¥9,200 per seat, the Cooperatives ¥17,750, while the five Communist seats cost an average of ¥76,579 each. The relatively high expenses of the Communist and Cooperative Parties were the more surprising as their contests had supposedly been staged in carefully selected areas.

f. *Campaign Issues*. All parties in appealing to the voters stressed the promise of providing for their immediate needs, such as food, clothing, housing, farm necessities, and jobs. As in other countries, the campaign promises tended to be vague as to the exact methods by which these promises were to be fulfilled.

All major parties, except the Communist, endorsed the general principles of the proposed draft constitution and all save the Communists advocated retention of the Emperor as a national symbol. The Social Democrats emphasized more than other parties the necessity of eliminating the Emperor's powers and strengthening those of the elected legislature. The Communists called for abolition of the Emperor system and establishment by peaceful means of a people's republic with a unicameral legislature. The election of prefectural governors by the people was a popular issue. It was specifically promised by the Liberal and Cooperative parties and supported by many small parties.

In every election district major emphasis in the campaign was placed on the problem of food. Virtually every candidate promised to raise the rice ration to 3 *go* (a *go* is equivalent to 0.38 pints) per person.

The system of compulsory rice deliveries was criticized by all parties. The Communists flatly opposed compulsory collections. Both they and the Social Democrats advocated control of rice collections by regular committees, though differing as to method. Other parties echoed this more faintly by calling for "rationalization" or "democratization" of the delivery system.

All parties called for a curb on inflation and violently criticized the Government's ineffectual efforts to solve this problem.

Taxation of war profits was endorsed by the Progressives, Liberals, and Cooperatives; the Communists would confiscate them entirely. Some kind of general property tax was favored by the Progressives, Liberals, Social Democrats, and Communists. Payment of compensation to war industries was in general opposed by all parties. Most major parties proposed reduction or postponement of the payment of interest and principal on the war debt. The Social Democrats would cancel payments to large holders of war bonds. All parties called for increased production, speedy reconversion, and reconstruction.

On broader issues of economic policy for postwar Japan, campaign statements gave only general indication of party attitudes. The Progressives and Liberals clearly desired restoration of free enterprise so far as practicable under existing conditions and advocated certain measures to aid businessmen. The Social Democrats put forward a moderate socialist program including nationalization of banks and key industries and a planned economy. They also advocated shorter hours, a minimum wage and other benefits to wage workers, as well as assistance to small-scale business.

The Communist program was essentially similar to that of the Social Democrats, though it placed more stress on "soaking the rich." The Cooperatives based their hopes on a thoroughgoing application of the principle of cooperative enterprise. Both Social Democrats and Communists favored participation of the workers in management, another practical question currently in the limelight. Nearly all parties went on record as favoring some form of social insurance.

All party platforms mentioned agrarian re-

form. The Progressives and Liberals favored an increase in the number of small landowners and payment of rents in cash or in kind The Social Democrats proposed government purchase of the lands of absentee owners for resale to their present cultivators. The Communists advocated confiscation of idle and absentee-owned land and its distribution to working farmers

g. *Interest in the Election.* Prior to election the apparent calm of the Japanese electorate misled even seasoned political observers into the delusion that Japan was apathetic toward the election.

Contrary to these expectations the turn-out was heavy on election day According to final official figures, 72 1 percent of the registered voters cast their ballots More than three-fourths of the men and two-thirds of the women voted The unexpected attendance of women at the polls and the victory of so many women candidates indicated that, despite the novelty of universal suffrage, the Japanese people were making sound progress toward true democracy and they exercised shrewd judgment in differentiating among a host of candidates Party labels meant comparatively little to them, as is evident in Tokyo District No. 1 where the three top contestants were the Liberal, Communist, and Social Democratic candidates, the last named a woman Japanese electors cast their ballots for individuals rather than for parties

h *Participation of Women in the Election* Miss Ichikawa Fusae, dean of women suffragists, told the Osaka *Mainichi* 2 days prior to the voting that in all probability 90 percent of the Japanese women would abstain from the polls on election day Political observers of the Osaka-Kyoto-Kobe area declared that not one woman had even the faintest chance of being elected to the Diet

Both contentions were disproved Japanese women took advantage of their newly acquired suffrage and voted heavily, with 13,000,000 or 66 percent of an approximate total of 20,000,000 eligible women voters casting their ballots The male vote was 79 percent of the eligible The best that preelection speculation had foreseen was a women's vote ranging between 30 percent and 60 percent

Thirty-eight women were elected out of 79 women candidates By party, the break-down was as follows

	Candidates
Liberal Party	5
Progressive Party	6
Social Democratic Party	8
Communist Party	1
Independents	10
Minor parties	8

The only all-women's party, the New Japan Women's Party (*Shin Nippon Fujin-to*), succeeded in electing one candidate to the Diet

Mrs Michiko Yamazaki, Social Democrat from Shizuoka Prefecture, led all women candidates with an aggregate of 191,293 votes, as compared to 211,146 for the male candidate who received the greatest number of votes

The eminent suffragist, Mrs Shizue Kato, better known as the former Baroness Ishimoto, was another successful woman candidate In a press interview, Mrs Kato called the election a vindication of the women's sense of political responsibility.

i *The Composition of the New Diet* The major parties alignments in the House of Representatives as a result of the elections were as follows:

			New House of Representatives			
Party	Old Diet	New Diet	Women in new Diet	Those in last Diet	Those in former Diet	New faces
Progressives	274	93	6	13	[illegible]	[illegible]
Liberals	46	139	5	14	[illegible]	122
Social Democrats	17	92	8	7	[illegible]	[illegible]
Cooperatives	–	14	–	–	[illegible]	13
Communists	–	5	1	–	–	5
Minor parties	–	35	6	–	2	37
Independents	72	83	12	–	[illegible]	[illegible]
Vacancies	57	2	–	–	–	
	466	466	[illegible]	[illegible]	[illegible]	[illegible]

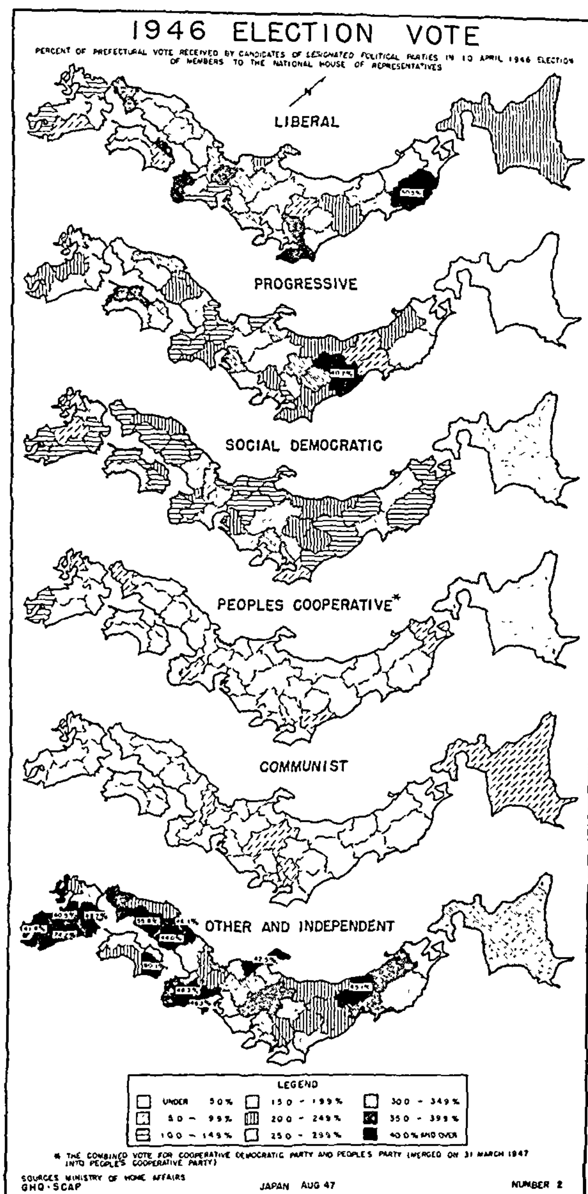
The composition of the Diet that emerged out of the election of 1946 contrasted sharply with former lawmaking bodies in Japan

In prewar Diets, an overwhelming preponderance of members were lawyers, big business representatives, and professional politicians. The new Diet, however, contained a large proportion of representatives who may be loosely described as "intellectuals." According to a survey made by the *Kyodo* news agency, only 52 lawyers, 82 corporation directors, and only 6 "politicians" were included in the newly elected Diet. Thirty-two educators, 22 authors, 13 physicians, and 49 farmers indicate the nonprofessional nature of the members which comprised Japan's new legislative body.

It is also noteworthy that in a country where age is given preference, the average member of the new Diet was 2 years younger than in the previous legislature. Also three-fifths of the members held college or university degrees.

The most convincing contrast, however, lay in the fact that, while the previous Diet, elected under the Tojo regime in 1942, was a one-party legislature, the new Diet represented no less than 33 political parties, in addition to 83 members classed as Independents. Never before in the history of Japan, were so many different points of view represented in the national legislature with, nevertheless, a few strong political groups at the center. Election results, moreover, showed that the Japanese people adopted a middle course. All groups recognized the need for change but few favored either the extreme right or the extreme left. No party received a majority vote.

The new Diet, composed in overwhelming degree of men whom the Japanese described as "new faces," was expected to bring a fresh point of view to bear upon the urgent problems facing the country. The old-line politicians had all but disappeared, to be replaced by younger, earnest men, adequately prepared by education and ability to cope with the solution of Japan's difficulties. "There is no question," wrote the *Nippon Times* editorially, "that the old order is doomed and that the new liberal movement, though not yet in full tide, is sweeping onward toward unprecedented levels."



4. Summary and Statement by the Supreme Commander on the Election

For the first time in many decades, on April 10, 1946, Japan conducted a free, fair, and honest election. Careful observation and investigation failed to reveal any substantial police or official pressure, corruption, intimidation or irregularities. No external barriers prevented a free expression of the people's choice. Public

interest in the election was remarkably high in view of prevailing conditions The results reflected the popular will insofar as its political expression had been consciously formulated *

The significance of the election was summarized in the following statement issued by the Supreme Commander on April 23, 1946

"Pure democracy is inherently a spiritual quality which voluntarily must spring from the determined will of the people It thus, if it is to become firmly rooted, may not be imposed upon a people by force, trickery, or coercion—nor is it a quality for barter or trade All men, since the beginning of time, have had the smoldering desire to achieve democracy—too few have had the unrestricted right to express that desire for it—fewer still to achieve it

It was Lincoln who said 'the people are wiser than their rulers' The soundness of this statement is historically evident—and the Japanese people provide no exception Given the opportunity for free expression of their popular will, they responded wholeheartedly, and, rejecting leadership dedicated to the political philosophies of the two extremes, both of the right and of the left, which experience has shown in practice inevitably lead to the same result—regimentation of the masses and the suppression of human liberty—they took a wide central course which will permit the evolvement of a balanced program of government designed best to serve their interests as a people

Democracy has thus demonstrated a healthy forward advance It is for the newly elected representatives of the people in the National Diet, in vindication of the faith of the electorate, now to consolidate and further that advance by developing a program of sound and constructive legislation

III. Report of the 1947 Elections

In anticipation of the enforcement of the new Constitution on May 3, 1947, a series of elections was held in Japan throughout April of that year in which every elective public office in the land was at stake—local and national, legislative and executive During the month, therefore, the Japanese people went to the polls four times to choose a total of 205,062 officials.

The political fermentation in Japan evidenced in demonstrations and strikes throughout 1946 and early 1947, and culminating in a proposed general strike on February 1, 1947, had indicated widespread dissatisfaction with the Yoshida Cabinet, particularly in respect to its financial and foodstuffs policies Although it had long been obvious that most demonstrations were carefully staged to suggest a degree of popular support they had never commanded, it nevertheless seemed apparent that the Cabinet had lost heavily in popular support Indeed, a public opinion survey conducted in January by the newspaper *Asahi* had indicated that 45 3 percent of those questioned favored the opposition Social Democratic Party more than the combined percentages of those who supported the two government parties

*For an analysis of the political effects of the election see sec XI Political Parties "

The timeliness of a new general election to stabilize the political situation and to stimulate the process of democratization was suggested in a letter of the Supreme Commander to Prime Minister Yoshida on February 6 The text of the letter follows

I believe the time has come for a general election Momentous changes in internal structure, in economic outlook, and in the whole fabric and pattern of Japanese life have occurred since the last general election nearly a year ago

It is necessary, in the near future, to obtain another democratic expression of the people's will on the fundamental issues with which Japanese society is now confronted. In this way we will once more advance in the process of democracy which now governs this state

"The exact time and details are matters which I leave to the discretion of the Japanese Government, but the election should take place as soon as practicable after the close of the present session of the Diet so that a new legis- [illegible]

1. General Significance of the New Elections

The publication of the Supreme Commander's letter received a hearty welcome. The significance of holding new general elections was reflected in the preelection reactions of the

Japanese press and in the general popular interest. Both press and citizenry were portentously aware of free and fair elections as one of the significant methods of achieving the aims of the Potsdam Declaration. It was recognized throughout Japan that the elections provided such an opportunity as would rarely be available for illustrating with dramatic emphasis the emergence in Japan of at least one of the distinguishing qualities of a modern democratic state: the guarantee of fair and impartial electoral processes and procedures.

Aside from their national and international significance, the elections of 1947 were also of marked interest in the field of local government. As the first postwar local government elections, the elections for local executives and local assemblies on April 5 and 30 would be a barometer of the extent to which liberal tendencies, already evident in the national arena, had penetrated into the local communities. The last major local government elections had been held in 1939; local assemblies were still regarded as strongholds of feudalism.

In the past local government officials had been chosen by methods which made no proviso for popular selection or desires; governors were appointed by the Home Ministers; city mayors and town and village heads were chosen by local assemblies from lists approved by prefectural governors, and heads of Tokyo wards were appointed by the Governor of Tokyo.

Revision of local government legislation providing for the popular election of local chief executives thus marked a sharp break from the past: the Japanese people were afforded not only their first opportunity in history to select their local chief executives, but also their first opportunity to establish local governments which would be other than pale reflections of centralized authority and over which the voters themselves could exercise continuing and effective control.

The April elections also represented Japan's first elections for local assemblies on the basis of universal suffrage and the first election for local assemblies in which membership had been more than an honorary position. Revised local government legislation applied with equal effect to prefectural, city, town, village, and Tokyo ward assemblies. Qualifications for voting or election were reduced to the simplest common denominator; 20 years of age and 6 months residence in a given locality. Powers of assemblies were increased sufficiently to guarantee that the executive and legislative branches of local governments would be on a plane of equality and that local legislation would be free from domination by the central government.

Also of primary importance was the fact that these were Japan's first publicly administered elections. In the past, all elections were supervised in detail by government officials, with the Home Ministry exercising control on behalf of the Government. The new electoral committees, exercising full and complete powers over the administration of elections, were chosen by local assemblies; prefectural committees by the corresponding prefectural assemblies, village committees by the corresponding village assemblies, etc. Inasmuch as each member of a local assembly cast but a single vote in the assembly's election of committee members, committees were thus roughly representative of the political complexion of local assemblies and of local electorates as well.

All in all, approximately 10,500 election administration committees were established throughout Japan: prefectural committees had 6 members each; city, town, village, and ward committees 4 each; and the committee representing the national constituency of the House of Councillors had 10. In essence, therefore, in the elections of April 1947 control and supervision of all Japanese elections was transferred for the first time from one man—the Home Minister—to approximately 50,000 citizens representing all shades of political opinion and all strata of society and all elected by a free and democratic process.

A wide variety of preelection measures were adopted to insure the carrying out of democratic elections. These precautions may be grouped into four categories: measures taken to (1) strengthen election laws, (2) screen candidates; (3) insure noninterference by the police; and (4) provide for surveillance by Occupation forces.

Insofar as counting and tabulation were concerned, not only did every candidate have the right to have a witness present at every step in the voting and counting process at every polling place and ballot counting station in Japan, but every Japanese citizen had the further right to bring any protest he might have to the attention of the Occupation forces as well as to his own Government

With respect to the laws, every step in the electoral process, from the filing of candidacy and the registration of voters to the final tabulation of results was fully protected by laws and safeguards comparable to those of any other democratic nation [2] Insofar as violations of these laws were concerned, not only were Japanese procedures of investigation, indictment and trial found to be highly competent and satisfactory but once again full opportunity was afforded all citizens to bring any criticisms of methods to the attention of surveillance personnel. The revealing fact that indictments for election law violations for all five 1947 elections totaled only 2,997 as compared to 2,632 in the one election of 1946 was an indication that political morality was markedly improved The figure of 2,997 included all alleged violations from all sources

In this connection, it is imperative to note that the vast majority of claims of election law violations involved such crimes as bribery of voters, house-to-house canvassing for votes, and violations of the poster law For all the 42,000 polling places and 11,000 ballot-counting stations in all Japan and for all the 200,000,000 ballots which were counted during the five elections there were only a handful of charges made anywhere—by the press, or public, or candidates or parties—of improper casting of votes, and no charges were made of miscounting of votes

Broadening of the franchise went hand-in-hand with the strengthening of the election laws Revision of the House of Representatives Election Law prior to the April 1946 elections had been marked by the greatest possible single step toward universal adult suffrage, the enfranchisement of women, which in a single move had more than doubled the number of those eligible to vote The same law had also reduced the voting age from 25 to 20

In preparation for the 1947 elections, therefore, it was felt that only three changes in the laws needed to be made to ensure the broadest possible extension of the franchise,[1] (1) granting of the franchise to certain minor groups previously denied the right to vote individuals who were bankrupt, those who had no fixed domiciles, those who were receiving public relief, and the like, (2) holding special registration days immediately prior to the April elections to insure registration of all those newly eligible to vote, and (3) extension to some 4,000,000 repatriates of the franchise in national elections without reference to the normal 6 months' residence requirements

A comparison of eligible electors in the 1947 election for the House of Representatives indicates adequately the extent to which the revised legislation broadened the franchise.

Year	*Men*	*Women*	*Total*
1938	14,075,010		14,075,010
1942	14,594,287		14,594,287
1946	16,278,926	20,557,564	36,836,490
1947	19,569,839	21,326,483	40,896,322

Two basic factors influenced the exact timing of the general 1947 elections: the Constitution and the purge ordinances. In view of the desire of the Japanese Government to complete all elections prior to May 3, the date on which the

[1]Appendix H 1, "Amendment to the Law for the Election of the Members of the House of Representatives, Law No. 43," March 31, 1947

[2]See Handbook and Laws for Japanese Diet Elections, April 1947, compiled by Government Section, GHQ, SCAP.

new Constitution was to be promulgated, this became the limiting date for the termination of the elections.

Imperial Ordinance No. 1 of 1947, which applied the principles of the national purge to local public offices, was issued on January 4, 1947.[3] Soon thereafter the machinery for enforcement and the schedule of elections were prepared. Existing Japanese law precluded holding all elections at one time. Executives and legislators, for instance, must be elected on separate dates. In order to complete the governmental structure by May 3, at least four elections had to be held. On February 17 the Japanese Government announced the following election schedule:

April 5—Elections for all executives, governors, mayors, and village and town headmen.

April 15—Run-off elections in the event that no candidate received the three-eighths vote required for election, or in the event of a tie.

April 20—Elections for the House of Councillors, both those chosen from the prefectures and those elected at large.

April 25—Elections for the House of Representatives.

April 30—Elections for assemblymen of prefectures, cities, towns and villages.

During the month prior to the election of local assemblymen, a total of 190,590 individuals were screened by the various public office qualifications examination committees: 5,345 for major election positions and 185,245 for other positions. Preliminary screening for principal elective positions resulted as follows:

Number screened for House of Councillors	1,406
Number barred	31
Number screened for House of Representatives	3,430
Number barred	138
Number screened for Prefectural Governor	466
Number barred	20
Number screened for Mayor of 5 principal cities	43
Number barred	1

Of the 185,245 individuals screened on the lower levels, 483 were found unfit under the ordinances to hold public office.

[3]Appendix B: 5i, Imperial Ordinance No. 1 of 1947.

The wide discrepancy between the number of individuals screened and the number actually found subject to the purge is an indication of the extent of self-elimination of possible candidates which took place before the campaign —individuals filed who believed they could pass the screening.

2. Surveillance by Occupation Forces

The procedures of election surveillance used in the 1946 election having proved highly satisfactory, it was decided to adopt similar procedures for the 1947 elections. This called for assignment of responsibility for preelection and postelection surveillance in each prefecture to the prefectural military government teams and for augmented surveillance on election day proper by roving teams comprised of representatives of both military government teams and tactical troops. Throughout the four campaigns and elections the senior military government officer in each prefecture assumed full responsibility for surveillance.

First steps toward preparations for surveillance of the 1947 elections on the local level were taken by SCAP in January, when approximately 75 officers representing Army, corps, and regional military government headquarters, British Commonwealth Occupation Forces, corps and division G–2, and all prefectural military government teams attended a 4-day conference at Government Section, General Headquarters. Officers who attended were those who were to be directly responsible for surveillance of the elections. Technical aspects of election laws and methods of surveillance and reporting were discussed and copies of a handbook containing principal election laws were distributed.

Subsequently, command instructions, directing the Commanding General of the Eighth Army to exercise surveillance over the April elections, were dispatched on January 28, 1947, (local elections) and February 21 (national elections). These instructions were accompa-

nied by three handbooks of election laws, which included annotated texts of all laws and ordinances pertinent to the national and local elections.

Continuous contact with military government teams was maintained by representatives of Government Section from the time of the January conference until the termination of the elections. Members of the Local Government Division of Government Section visited teams throughout Japan in the weeks before the first election, to insure that teams were familiar with election laws and ordinances and to insure uniform compliance throughout Japan with SCAP instructions on surveillance In addition, on each election day, approximately 20 representatives from Government Section were assigned to assist military government teams on election surveillance Thus, on each election day, SCAP representatives were stationed in the majority of the principal cities and prefectures throughout Japan to lend such technical assistance and advice as might be desired

Throughout the election campaigns Government Section remained the principal point of contact with the central government in respect election matters Military government teams had been authorized to report directly to SCAP any serious breaches in the election laws as well as any criticism of activities of Occupation personnel in connection with the elections All reported breaches of the laws were called immediately to the attention of the Government No criticism of the activities of Occupation personnel was received

In addition candidates and parties were encouraged to hold as many campaign rallies as they desired No prior notifications to military government were required for any such rallies and no restrictions were placed on election campaign speeches

Regarding the technical aspects of actual surveillance, experience in the April 1946 election had indicated that surveillance team organization of one officer one enlisted man, and one interpreter was eminently satisfactory This pattern was, therefore, duplicated in the 1947 elections, with personnel again being drawn from military government teams, Eighth Army tactical troops, FEAF units, British Commonwealth Occupation Forces, and the United States Navy Military Government component in Yokosuka

Although prefectures varied considerably in size and population, the average prefecture had between 800 and 900 polling places, with about one to every four polling places designated as a ballot-counting station The optimum surveillance would have covered every polling station every election, but it was apparent from the outset that this would be impossible in view of the extreme isolation of many stations, the blanket of snow which throughout April made many towns and villages in Hokkaido, northern Honshu, and other mountainous areas inaccessible by jeep, and the large number of polling places situated on islands separated from the mainland by up to an 8-hour boat trip Conditions naturally varied from prefecture to prefecture but the law of diminishing returns indicated that approximately 50 percent coverage of polling places throughout the country was about the most that could be expected at any election without assigning a considerable number of teams which at best could cover only two or three polling places It was anticipated, however, that by varying assignments from election to election nearly every one of the 42,617 polling places throughout the country could be reached at least once during the course of the elections

Three factors, however, combined to make election day surveillance in 1947 more difficult than in 1946, (1) doubling of the number of polling places, (2) decrease in the number of Allied personnel available for surveillance duties; and (3) the great increase in the number of elections The average number of polling places in 1947 totaled 42,617 as contrasted to 21,059 in 1946. In 1946, a total of five American divisions, in addition to the British Commonwealth Forces, were drawn upon for surveil-

lance duties; in 1947, only four divisions, plus the BCOF, were available, the Second Marine Division having returned to the United States. Only one election had been held in 1946; four, and in some prefectures five, elections were held in 1947. Where it had been possible to spare large numbers of personnel for 2 or 3 days in 1946, an entirely different problem was created by the necessity of utilizing surveillance teams throughout most of the entire month of April 1947.

Despite these problems, however, average election surveillance in 1947 nearly doubled that of 1946 from the standpoint of the number of separate polling places visited. As opposed to coverage of approximately 12,000 out of 21,089 polling places in 1946, the totals in 1947 were as follows. Both years, of course, many of the stations listed were covered twice in each election and some three times.

Election	*Average number polling places*	*Number of teams*	*Number polling places surveyed*	*Percent polling places surveyed*
Apr. 5	42,617	1,399	20,972	49.2
Apr. 20	42,617	1,390	22,005	51.6
Apr. 25	42,617	1,388	22,237	52.1
Apr. 30	42,617	1,354	21,166	49.6

Several days prior to the election, team captains were briefed at military government headquarters and in turn they were responsible for briefing their own teams and for determining the order in which stations would be visited. Throughout the period of elections, surveillance teams remained in constant touch by telephone with election offices established in prefectural capitals and were able to refer directly to the prefectural teams any problem arising from their surveillance activities.

3. Measures to Publicize the Elections

The manifold measures put into action in the spring of 1947 to publicize the elections among the masses of the population are analyzed in detail in another section of this work.* Only the main lines of that wide publicity campaign to stimulate political interest on the part of the millions of the nation's electorate will be indicated here.

An intensive program of political education was launched by SCAP as early as February 1947. This program was designed to achieve the twin objectives of helping electors to cast their ballots intelligently and to stimulate participation by all eligible voters. More than clarifying campaign political issues and explaining election procedures, the objective was also to emphasize the responsibility of citizenship and the right to vote in a democratic society. Public meetings to afford candidates of all political persuasions an opportunity to discuss election issues in a free and unrestricted atmosphere were provided under this program. But in all cases, care was taken to avoid any suggestion of favoritism on the part of Occupation forces, which throughout the elections maintained a strict neutrality concerning election issues or political personalities.

Government agencies made signal contributions to this program of public education. A series of posters, which were placed at all prominent public places throughout the country, were issued by the Home Ministry. These posters stressed graphically the voters' responsibility for independent and intelligent participation in the elections. The Ministry also issued a series of press releases, timed to precede each of the elections, containing detailed information relating to election procedures and administration, and with a special effort made to indicate to voters where they might have access to detailed information on all candidates. Under all conceivable aspects, the elections of 1947 were emphasized to the Japanese as the most significant in their history.

The Japanese press, radio, motion-picture industry, and all other media of public information were utilized in this intensive electoral publicity campaign stressing the revolutionary nature of the elections and calling upon every Japanese citizen to cast his free and independent vote.

*See sec. XII, Political Education.

4. Political and Campaign Issues

a. *Political Alinements Before Election* Since the election of 1946 the course of Japanese politics had been one of flexible character, reflecting an effort to meet the existing national emergency. The political parties were grouped as follows:

Conservative	Opposition
Liberal Party	Social Democratic Party
Progressive Party	Cooperative Democratic Party
	People's Party
	Communist Party

On March 31, 1947, the alinement of the parties changed with the merger of the Cooperative Democratic Party and People's Party, and the renaming of the Progressive Party as the Democratic Party with a change in its policies and platform. At the close of the Ninety-second Diet, therefore, the political parties were grouped as follows

Conservative	Middle-of-the-road	Opposition	Extreme Left
Liberal	Democratic	Social Democratic	Communist
		People's Cooperative	

The Diet strength of the parties had changed considerably with the Democratic Party holding the largest number of seats in the House of Representatives, due to the new members acquired at the expense of the Liberal Party, People's Cooperative Party, and the Independent Club. On the eve of the 1947 elections, the Diet representation of the major political parties was as follows

Democratic Party	145
Liberal Party	140
Social Democratic Party	98
People's Cooperative Party	63
Communist Party	6

b. *Party Platforms* A general classification of the platforms of the five political parties for overall policies may be made as follows

Liberal Party	Laissez faire
Democratic Party	Modified capitalism (meaning stringent government controls)
Social Democratic Party	State control as a preliminary to government ownership (e.g., key industries, coal, iron, steel, fertilizer)
People's Cooperative Party	Cooperative unionism
Communist Party	People's control of Zaibatsu-owned enterprises and the key industries

These programs may be summarized under the following headings

(1) *Economy and Industry* The Liberal Party advocated measures for increasing production through priority to key industries and participation in world trade relations. The Democratic Party also propounded the necessity for granting priorities, and in addition advocated strengthening of State control for the purpose of industrial reconstruction. The Social Democratic Party proposed state management of key industries, the People's Cooperative Party advocated "cooperative unionism" (basic policies similar to the Social Democratic Party), and the Communist Party advocated state management and popular control of key industries

(2) *Political.* All parties stressed the need for improving the existing administrative structure. The Liberal and Democratic Parties advocated reforms of the civil service and the local self-government system, the Social Democratic Party urged democratization by reforming the bureaucracy, the People's Cooperative Party called for improved local self-government and for the transfer of substantial responsibility for state affairs from the central to the local governments. The Communist Party advocated the overthrow of the Yoshida Cabinet, together with all reactionary and conservative influences.

(3) *Finance.* All political parties agreed on the need for effecting governmental controls. The Liberal Party advocated the adoption of a priority system for according loans to industries, the granting of free industrial loans, and reform of the taxation system. The Democratic Party held generally the same views and urged stabilization of national finance by enforce-

ment of a fixed price system. The conservative parties opposed the Social Democratic Party's policy of suspending interest payment on war bonds. The latter party urged the nationalization of the Bank of Japan and the establishment of an Economic Rehabilitation Bank. The People's Cooperative Party agreed with the policies of the Social Democratic Party and urged curtailment of administrative expenditures. The Communist Party advocated progressive taxes, repudiation of war bonds and the nationalization of banking institutions with control by the people.

(4) *Agriculture.* All parties stressed the need for increasing food production and improving the rationing system. The Liberal Party and the Social Democratic Party differed on the question of disposing of rice stocks in excess of rice quotas and the removal of official controls over perishables. The Liberals urged the elimination of all control regulations. The Social Democratic Party urged that decisions on quotas and the execution of rice deliveries be entrusted to representatives of the farmers. It also advocated rationing policies applying to foods and fuels, and continuance of official controls on perishables.

(5) *Labor.* On labor policies, all parties agreed to the need for close cooperation between capital and labor through participation of labor in management and the establishment of a minimum wage system and reforms to improve conditions of the workers. The Social Democratic Party urged the enlargement and sound development of labor organizations. The Liberal Party advocated enhancement of the laboring spirit, and the Democratic Party urged speeding up industrial rehabilitation with consequent benefit to the nation's workers.

c. *Campaign Expenditures.* The following limits per candidate were set by law on campaign expenditures for the April 1947 elections:

House of Councillors (national constituency)	¥75,000
House of Councillors (prefectural constituency)	50,000
House of Representatives	50,000
Governors of prefectures (depending on population)	25,000–50,000
Mayors of cities (depending on population)	5,000–20,000
Chiefs of Tokyo wards (depending on population)	5,000–20,000
Mayors of towns and villages	No provision
Prefectural assemblies	12,000
City and Tokyo ward assemblies	1,200
Town and village assemblies	No provision

Free post cards for use in election campaigns were distributed to candidates: 20,000 each to candidates for the House of Representatives and House of Councillors, national or prefectural constituency; and 10,000 for candidates for governor.

The following limitations were placed on the number of posters to be used in the campaign: 10,000 for candidates for the House of Councillors from the national constituency, with not more than 1,000 to be used in any single prefecture; 1,000 for candidates for the House of Councillors from prefectural constituencies, the House of Representatives, governors of prefectural and mayors of the five large cities; and 300 for members of prefectural and municipal assemblies and mayors of other cities.

5. General Analysis of the Elections

a. *Local Elections.* On April 5, 1947, the Japanese electorate went to the polls to elect by direct popular vote the governors for the 46 prefectures, 209 mayors, and 10,210 chiefs of towns, villages and Tokyo wards. Hitherto city, town, and village heads had been elected indirectly through the local assemblies with subsequent approval by the Ministry of Home Affairs, and chiefs of Tokyo wards had been appointed by the Governor of Tokyo.

The number of persons who filed questionnaires advancing their candidacies for these offices reached a total of 47,594. However, as the day of election approached this number dwindled to 20,594. Among these 20,594 contestants for the 10,419 mayoralty positions there were

14 women, of whom 3 were elected—the first women in Japanese history thus selected as local chief executives

The party affiliations of the new local executives were as follows *

	Liberals	Democr	Social Democr	Co-oper	Commun	Minor parties	Independents	Total
City Mayors	19	23	11	1		9	146	209
Chiefs—towns, villages and Tokyo wards	360	316	253	63	11	96	9,111	10,210
	379	339	264	64	11	105	9,257	10,419

As percentages, the party affiliations of the new local executives is reflected as follows

Liberals	Democr	Social Democr	Co-oper	Commun	Minor parties	Independents	Total
3 6	3 3	2 5	0 6	0 1	1 0	88 9	100

Thus nearly 90 percent of the mayors were nonparty men. Actually, however, in many villages, towns, and cities these independent candidates were endorsed or supported by political groups.

Two hundred and six candidates contested for the 46 governorships In most prefectures the campaign was spirited The party affiliations of the 206 candidates follow

	Liberals	Democr	Social Democr	Co-oper	Commun	Minor partiee	Independents	Total
Candidates	14	10	33	6	9	20	114	206
Elected	4	4	4	0	0	3	31	46
Percent of party candidates who succeeded	28 6	40 0	12 1	0	0	15 0	27 2	22 3

Again, as was true in the case of mayors, the phrase "independent" candidate did not mean that the candidate was not given some support by the parties In almost all cases the independent candidates were accorded political party support.

Among the 206 candidates there were 32 former governors, of whom 26 were elected, including those who were victorious in the run-off elections Of the six who were defeated, two were defeated by other former governors. Six other candidates were prominent government officials

Run-off elections were necessary in eight prefectures, twenty cities, six Tokyo wards, and 312 towns and villages where no candidate received the required minimum 37½ percent vote, as prescribed in the Law for the Organization of Urban and Rural Prefectures Final contests were held on April 15 **

As was anticipated, smaller numbers of voters participated in the run-off elections the average ranged from 6 to 20 percent fewer voters than there were on April 5 Yet the purpose of the elections was achieved winning candidates were accorded a more extensive popular support

The vote received by the elected governors in the run-off elections was as follows

Prefecture	Party aff of candidate	Vote on April 5	Vote on April 15
Chiba	Liberal	198,399	284,321
Hokkaido	Soc Democr	384,830	555,862
Ibaragi	Independent	207,765	352,399
Kochi	Independent	89,159	171,876
Niigata	Independent	312,945	515,394
Wakayama	Liberal.	98,350	219,318

Moreover, the experience of conducting run-off elections was informative and beneficial This was the first time in Japan that such elections had been held

Because of the deep public interest in the local assemblies, a precedent was established for Japan when 31,258,646, or 81 7 percent of the registered voters, turned out on April 30 to elect members of prefectural and local assemblies This figure crowned that of the approximate 80 per cent obtained under the Tojo elections in 1942, when the people were ordered to vote In many prefectures more than 90 percent of the electors went to the polls. Women also established records Voting for the second time in local elections, women turned out in unusu-

*In 3,374 municipalities of Japan no elections took place because there was only one candidate in the field This condition illustrates the fact of wide general agreement on the candidate before elections It is further indicative of the persistence of the historic pattern in small rural communities

**In two prefectures, Nara and Miyazaki, one of the two candidates was purged just prior to the run-off elections Because of the Imperial Ordinance concerning the purge which stated that if a candidate were purged the action was to be treated or considered as a withdrawal, the local government laws took effect Hence no election was needed and the other candidate automatically became governor

ally large numbers; 16,671,081 or 80 percent of registered women cast their ballots.

The municipal assembly elections were generally non-partisan. Most candidates for election to prefectural assemblies were also independents. The party vote in prefectural elections was as follows:

	Independent	*Liberal*	*Democratic*	*Social Democratic*
Votes	9,690,180	5,720,332	6,095,436	5,470,263
Percent of Total	31.0	18.3	19.5	17.5

	Cooperative	*Communist*	*Minor parties*	*Total*
Votes	1,187,829	562,656	2,531,950	31,258,646
Percent of Total	3.8	1.8	8.1	100

The distribution of elected assemblymen by parties was as follows:

	Independent	*Liberal*	*Democratic*	*Soc. Dem.*
Prefectural	803	491	488	411
City assemblies	4,917	656	647	672
Tokyo ward assem.	355	245	132	140
Village and town assemblies	167,924	3,956	4,124	4,701
Total	173,999	5,348	5,391	5,924

	Cooperative	*Communist*	*Minor parties*	*Total*
Prefectural	116	4	177	2,490
City assemblies	32	36	312	7,272
Tokyo ward assem.	3	15	5	895
Village and town assemblies	577	365	1,577	183,224
Total	728	420	2,071	193,881

b. *The National Elections*. The elections for the House of Councillors and the House of Representatives, held on April 20 and 25 respectively, demonstrated an apparent paradox in the political thinking of the Japanese people. In the preceding elections for governors, mayors, and town and village chiefs a rather conservative trend misled some observers to predict a victory for either the Liberals or Democrats in the national elections as well. Such misconceptions arose from a lack of understanding of the superior importance in the eyes of the Japanese electorate of well-known personalities as opposed to political parties and principles. The average Japanese tended to vote for the prominent men in his local community, even though their views may not have coincided with his own.

This tendency persisted to a certain extent in the elections to the House of Councillors, since it was widely believed that the Upper House should preserve its traditional conservative character as opposed to the Lower House. This attitude accounts for the election of a large number of independents, most of whom were assumed to be conservatives. However, liberal influences did make a great deal more headway than in the local elections, and the Social Democrats emerged as the plurality party.

In the elections for the House of Representatives the voters showed a surprising preference for parties as against personalities, and, as a result, very few independents or minor party candidates were elected. Again, it was the Social Democrats who gained a plurality in the Lower House, with not quite a third of the seats.

A major government reorganization required by the new Constitution was the creation of an elected Upper House in the Diet replacing the House of Peers. For the first time in Japanese parliamentary history the people assumed responsibility for selecting all national legislators. A law implementing this constitutional provision specified that 150 members of the House of Councillors were to be elected from prefectural constituencies and 100 from a national constituency, the entire nation comprising one electoral district for this latter election.[4] On April 20, therefore, each voter cast two votes, on separate ballots, one for a prefectural constituency candidate and one for a national constituency candidate. The term of office is 6 years, with half the members of the House being elected every 3 years. In this first election, however, the 50 percent of the candidates who polled the greatest number of votes in each of the prefectural and national constituencies qualified for 6-year terms and the remaining 50 percent for 3-year terms.

[4]Appendix H: 5, "Law for the Election of Members of the House of Councillors; Law No. 11," February 24, 1947.

For the national constituency, official returns from the Home Ministry gave the total number of votes cast as 24,546,494, including 13,189,443 male voters and 11,357,051 women voters.

Independent candidates captured 45 percent of the seats in the House of Councillors, more than the total amount mustered by the Social Democrats, Liberals and Democrats, which constituted Japan's three major parties The majority of the independents were of conservative leanings.

In the prefectural electoral group, conservatives also won an overwhelming majority over the "progressives." The conservatives numbered 64 percent of the successful candidates

The number of women candidates standing for election to the House of Councillors totaled 19 In the national constituency, 8 out of the 13 candidates were elected; and 2 of the 6 in the the prefectural constituencies were elected

The following tabulation summarizes the results of the House of Councillors election

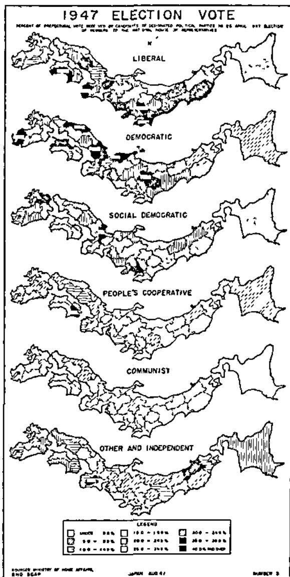
	National constituency	*Prefectural constituency*	*Total*
Liberal Party	8	31	39
Democratic Party.	6	24	30
Social Democratic Party	17	30	47
People's Cooperative Party	3	6	9
Communist Party	4	1	5
Minor Parties	5	5	10
Independents	57	53	110
Total	100	150	250

The following is a tabulation of votes cast for the various political parties and groups.

	Number of votes	*Percentage*
Democratic Party	3,117,202	14
Liberal Party	3,823,767	17
Social Democratic Party	4,847,188	22
People's Cooperative Party	1,038,271	5
Communist Party	809,177	4
Minor parties	1,026,176	5
Independents	7,235,693	33
Total	21,896,474	100

An analysis of the vocational grouping of the 250 successful candidates of the Upper House members was as follows. 52 industrialists were elected, 33 former members of the House of Peers, 24 farmers' association officials, and 22 teachers, 7 former Cabinet ministers, 3 ambassadors, 15 held other government positions Labor leaders totaled 20, newspapermen 5, religious workers 8, writers 8, physicians 5, social workers 6, lawyers 7, businessmen 25

Ten of the new Councillors were women, as has already been noted.



The election also created an Upper House of relatively young men. The average age of the councillors was ten years lower than that of the members of former House of Peers.

In the House of Representatives election on April 25 there were 1,573 candidates for the 466 seats, including 317 members of the expiring Diet, 24 members of previous Diets, and 84 women. The number of candidates for each seat ranged from 8 in the Tokyo Fourth District to 1.8 in the Fourth Fukuoka District.

Much greater interest was shown in the elections for the House of Representatives than for the House of Councillors. In this election, 67.9 percent of the registered voters participated. Out of a total registration of 19,569,839 men and 21,326,483 women, 14,658,264 men and 13,137,620 women voted. Invalid ballots amounted to 406,777, or less than 1.5 percent throughout the nation.

The election was highlighted by the emergence of the Social Democrats as the leading party in the Lower House, the party displacing the Liberals and showing a spectacular gain in strength, despite its failure to win even as much as one-third of the total number of seats. At the same time, a striking contrast was offered to the results of the House of Councillors elections in that minor parties and independents were unable to win more than a combined total of 11.6 percent of the popular vote and only 37 out of the 466 seats in the House. Although voters tended to vote for personalities rather than parties in the Upper House elections, they showed a decided preference for the major parties in the Lower House elections, with "new faces" winning 220 seats.

Another noteworthy result was the failure of women candidates to capture more than 15 seats, although the total number of candidates was nearly the same as for the 1946 elections, at which time 38 women were elected.

The Communists suffered a comparable setback, electing less than 1 percent of the House membership, although their popular vote was 3.7 percent and their vote-getting strength showed little change from the 1946 election results.

The following is a tabulation of candidates for the House of Representatives:

	New candidates	Incumbents	Former Diet members	Total	[illegible]
Democratic Party	233	63	[illegible]	[illegible]	[illegible]
Liberal Party	224	92	7	323	[illegible]
Social Democratic Party	1?5	[illegible]	3	[illegible]	[illegible]
Independent	24?	5	3	25?	[illegible]
Minor parties	14?	4	[illegible]	[illegible]	[illegible]
Communist Party	114	[illegible]	[illegible]	[illegible]	[illegible]
People's Cooperative Party	[illegible]	11	2	[illegible]	[illegible]
Total	1,232	317	24	1,573	[illegible]

Following is a tabulation indicating complete House of Representatives election results by parties:

	New	Re-elected	Former Diet members	Total	Gain or loss	Votes	Percentage of votes
Social Democrats	69	71	3	143	+45	7,17?,???	[illegible]
Liberals	60	71	1	132	[illegible]	7,2??,???	[illegible]
Democrats	60	63	3	126	−1?	[illegible]	[illegible]
People's Coop.	7	24	0	31	−32	1,???,???	[illegible]
Communists	2	2	0	4	−2	[illegible]	[illegible]
Minor parties	15	3	0	1?	+14	1,??2,2??	[illegible]
Independents	[illegible]	4	[illegible]	12	+3	1,??2,2??	[illegible]
Total	221	23?	7	46?		27,???,???	[illegible]

In the key election areas, the Social Democrats captured 12 out of 27 seats in Tokyo metropolitan district, compared to 8 for the Liberals, 4 for the Democrats, 2 for the Communists, and 1 for the People's Cooperatives. The two Communist leaders, Sanzo Nosaka and Kyuichi Tokuda, were placed last among the winners in their respective districts. In Osaka, the Social Democrats won 9 out of 19 seats, followed by 5 for the Democrats, 4 for the Liberals, and 1 Independent. Two Communists placed as runners-up in the first and [illegible] districts of Osaka Prefecture. In Fukuoka, the Social Democrats secured 7 out of 1? seats, the Democrats 6, and the Liberals 3. In Hokkaido, the Social Democrats also [illegible] with [illegible] of the 22 seats, [illegible]

Liberals, 3 for the Democrats, 1 for the People's Cooperatives, and 3 for minor parties In Hyogo, the Democrats captured half of the 20 seats, followed by 5 for the Social Democrats, 2 for the Liberals, and 1 for the People's Cooperatives. Of Aichi's 19 seats, 6 each went to the Democrats and Social Democrats, 4 to the Liberals, 2 to the People's Cooperatives, and 1 to a member of a minor party

All 11 members of the Yoshida Cabinet who ran for reelection were elected Three Ministers —Justice Minister Tokutaro Kimura, Education Minister Seiichi Takahashi, and State Minister Tokujiro Kanamori—did not run for election to either House of the Diet

The new House of Representatives included 221 "new faces," 238 former Diet members, and 7 former members It contained the following vocational groupings· 14 members of agricultural associations, 16 teachers, 24 former government officials, 44 lawyers, 6 former Cabinet ministers, 19 labor leaders, 10 newspapermen, 6 religious workers, 23 writers, 3 physicians, and a large number of businessmen and industrialists

6. A Note on the Participation of Women in the Election

The extension of suffrage rights to women before the general election for the House of Representatives in April 1946 inaugurated a year of unprecedented freedom which fostered the growth of political consciousness among Japanese women. Quantitative indices of political consciousness are reflected in the number of registered voters, the number of votes cast, the number of candidates for public office, and the number elected The 1946 election disclosed the existence of women's political interest and potentiality and the 1947 elections revealed increased political activity and acquisition of influence at all levels of government. Women took advantage of their first opportunity in history to participate as candidates and electors in the elections for the House of Councillors and for local legislative bodies and executive posts

Women ran for and were elected to legislative posts at all levels of government No women were elected governor of a prefecture, mayor of a city, or chief of a town, but three women were elected as village chiefs

In the national arena, ten women were elected to the House of Councillors However, in the House of Representatives election of 1947, the only 1947 election directly comparable to the 1946 election, the number of women elected to the Lower House showed a considerable decrease In 1946, 38 out of 79 candidates were elected, whereas in 1947 only 15 out of 84 candidates were successful Twelve of those elected were former Diet members

The political potential of women as revealed by an analysis of the 1946 and 1947 elections is not only amazingly in excess of expectations, but in excess of reasonable hope and portends well for the future of Japan

Granted that their interest far exceeds their demonstrated capacity, it is nevertheless a warranted presumption that a continuation of their present interest in conjunction with further emancipation from stultifying social mores, extension of educational opportunities, and exposure to theoretical and practical political considerations will undoubtedly facilitate the development of democracy in Japan

7. Election Violations

According to information released by the Home Ministry on June 20, 1947, some 3,091 cases involving 8,532 individuals were being investigated by the Public Procurator's offices in connection with suspected election offenses Of this number, 2,997 persons had been indicted by June 10, while 2,246 were cleared

The final report of the 1946 Diet election disclosed that 5,432 cases of violations had been referred to the procurator's offices This covered 1 election only, whereas the 3,091 cases in 1947 included the results of 4 elections

Of the 2,997 indicted as of June 10, 1947,

fifty received sentences of hard labor, 21 were given lighter jail sentences, 1,028 were fined, while 1,905 still awaited trial as of that date. One person only, in Fukushima, was acquitted while two were convicted but had their sentences remitted. In ten instances both fines and imprisonment were imposed.

In 1946, 128 received sentences to hard labor, 63 lighter sentences, 1,822 paid fines, and 7 were acquitted.

By far the greatest number of election offenses in 1947 involved bribery, solicitation of bribes or the delivery of scarce articles in lieu of cash. These numbered 972, involving 5,461 individuals. The next greatest number of offenses were house to house canvassing, which accounted for 755 cases and 1,061 individuals, and violation of poster regulations, 764 cases and 888 individuals.

Arranged by parties to which the 8,532 suspected offenders were alleged to belong, statistics indicated that 804 Liberals were accused, 728 Democrats, 593 Social Democrats, 86 People's Cooperatives, and 75 Communists. A further 183 belonged to minor parties, while 5,031 were Independents. More than two-thirds of the charges against these persons dealt with bribery in one form or another.

In this connection, it must be pointed out that Japanese election laws are far more detailed and stringent than are those of most democratic nations and therefore many acts are subject to prosecution in Japan which might be regarded as wholly permissible in election campaigns in other countries. Thus, payment for the services of legitimate campaign workers, house-to-house canvassing for specific candidates, posting too many placards, or using posters of other than standard size, are considered "crimes" under the Japanese election laws.

8. Abstention from Voting

The abstention rate of voters in the election of 1946 had been 27.9 percent. Although actually only the House of Representatives election could be compared with the 1946 figures it had been hoped that each of the 1947 elections would see an abstention rate of less than the previous year. In actuality, however, only one election showed a lower rate than that of 1946:

Election	*Date*	*Rate of abstention (percent)*
Local executives	April 5	27.9
House of Councillors	April 20	40.8
House of Representatives	April 25	32.1
Local assemblies	April 30	18.3

In considering the average abstention rate of 30 percent for the 1947 elections, it must be recalled that essentially this represents a percentage of total eligible voters and not a percentage of a total of registered voters, which in turn is only a percentage of the total of eligible voters. Japanese law provides basically for automatic registration; once each year all eligible voters are registered regardless of whether they have any interest in voting or not. In most western countries, of course, the situation is reversed; registration is not automatic but requires that the voter take the initiative and register himself. From the standpoint of the percentage of all adults actually participating in an election, therefore, a 70 percent turnout in a Japanese election would be equivalent of about an 85 percent turnout in an average American election.

The basic reasons for abstention in 1947 were apparently the number of elections in rapid succession held within the brief span of a month, the severe restraints placed on campaigning because of the lack of paper, and the novelty and complexity of such elections as required the casting of separate ballots.

In view of the varying terms of the offices included, such a series of elections as was held in 1947 could not again be held until 1959—and even juxtaposition in 1959 would require that during the intervening years no general election for the National Diet be held except at the end of a four-year term.

9 Statement by the Supreme Commander

The democratic response of the people of Japan to the opportunities afforded them in the elections of 1947 for an unprecedentedly full exercise of the franchise and for the establishment of both national and local governments according with the freely expressed will of the electorate was hailed by the Supreme Commander in the following statement issued on April 27:

"With the recently held series of elections, the last preparatory step necessary for the inauguration of the new Japanese Constitution has been accomplished This Constitution is among the most liberal and progressive national charters in the world It reflects one of the great spiritual reformations of mankind Its effectuation marks a new era in the Far East which may well prove vital to the future of civilization It gives the Japanese people another chance. It raises the masses of them from the totalitarianism of practical slavery to the dignity of free men. I have faith they will not fail their new obligation

"That faith is justified by the elections just past From factories and shops and homes, from villages and [illegible] pression of the rights and liberties of the masses On [illegible] freed from the stern suppression of prison cells, this philosophy and its leaders had been given the fullest liberty and freedom of political action in open and fair competition with democratic forces and beliefs It thus had its full chance and on the merits has failed The Japanese people have firmly and decisively rejected its leadership and overwhelmingly have chosen a moderate course, sufficiently centered from either extreme to insure the preservation of freedom and the enhancement of individual dignity."

fifty received sentences of hard labor, 21 were given lighter jail sentences, 1,028 were fined, while 1,905 still awaited trial as of that date. One person only, in Fukushima, was acquitted while two were convicted but had their sentences remitted. In ten instances both fines and imprisonment were imposed.

In 1946, 128 received sentences to hard labor, 63 lighter sentences, 1,822 paid fines, and 7 were acquitted.

By far the greatest number of election offenses in 1947 involved bribery, solicitation of bribes or the delivery of scarce articles in lieu of cash. These numbered 972, involving 5,461 individuals. The next greatest number of offenses were house to house canvassing, which accounted for 755 cases and 1,061 individuals, and violation of poster regulations, 764 cases and 888 individuals.

Arranged by parties to which the 8,532 suspected offenders were alleged to belong, statistics indicated that 804 Liberals were accused, 728 Democrats, 593 Social Democrats, 86 People's Cooperatives, and 75 Communists. A further 183 belonged to minor parties, while 5,031 were Independents. More than two-thirds of the charges against these persons dealt with bribery in one form or another.

In this connection, it must be pointed out that Japanese election laws are far more detailed and stringent than are those of most democratic nations and therefore many acts are subject to prosecution in Japan which might be regarded as wholly permissible in election campaigns in other countries. Thus, payment for the services of legitimate campaign workers, house-to-house canvassing for specific candidates, posting too many placards, or using posters of other than standard size, are considered "crimes" under the Japanese election laws.

8. Abstention from Voting

The abstention rate of voters in the election of 1946 had been 27.9 percent. Although actually only the House of Representatives electio could be compared with the 1946 figures it ha been hoped that each of the 1947 election would see an abstention rate of less than th previous year. In actuality, however, only or election showed a lower rate than that of 194

Election	*Date*	*Rate of abstenti (percent)*
Local executives..............	April 5	27.9
House of Councillors..........	April 20	40.8
House of Representatives......	April 25	32.1
Local assemblies..............	April 30	18.3

In considering the average abstention rate c 30 percent for the 1947 elections, it must b recalled that essentially this represents a per centage of total eligible voters and not a per centage of a total of registered voters, whicl in turn is only a percentage of the total of eli gible voters. Japanese law provides basicall for automatic registration; once each year al eligible voters are registered regardless o whether they have any interest in voting o not. In most western countries, of course, th situation is reversed; registration is not auto matic but requires that the voter take the ini tiative and register himself. From the stand point of the percentage of all adults actuall participating in an election, therefore, a 7(percent turnout in a Japanese election woulc be equivalent of about an 85 percent turnout ir an average American election.

The basic reasons for abstention in 1947 wer apparently the number of elections in rapid succession held within the brief span of a month the severe restraints placed on campaignin because of the lack of paper, and the novelty and complexity of such elections as required the casting of separate ballots.

In view of the varying terms of the offices included, such a series of elections as was held ir 1947 could not again be held until 1959—and even juxtaposition in 1959 would require that during the intervening years no general election for the National Diet be held except at the end of a four-year term.

9. Statement by the Supreme Commander

The democratic response of the people of Japan to the opportunities afforded them in the elections of 1947 for an unprecedentedly full exercise of the franchise and for the establishment of both national and local governments according with the freely expressed will of the electorate was hailed by the Supreme Commander in the following statement issued on April 27:

"With the recently held series of elections, the last preparatory step necessary for the inauguration of the new Japanese Constitution has been accomplished This Constitution is among the most liberal and progressive national charters in the world It reflects one of the great spiritual reformations of mankind. Its effectuation marks a new era in the Far East which may well prove vital to the future of civilization It gives the Japanese people another chance It raises the masses of them from the totalitarianism of practical slavery to the dignity of free men. I have faith they will not fail their new obligation

"That faith is justified by the elections just past From factories and shops and homes, from villages and [illegible] Japanese people have firmly and decisively rejected its leadership and overwhelmingly have chosen a moderate course, sufficiently centered from either extreme to insure the preservation of freedom and the enhancement of individual dignity "

SECTION XI

Political Parties

Introductory Statement

At the time of the surrender all organized political activity in Japan was carried out on a totalitarian, one-party basis under the auspices of the Great Japan Political Society, successor to the Imperial Rule Assistance Society. Shortly after the Occupation began the Great Japan Political Society dissolved itself and in its place arose a number of new parties of which the major ones represented regroupings of political forces around former leaders or influential members of the pre-Tojo political parties. Thoroughly unrepresentative of and unresponsive to the popular will, boss-dominated and venal, these old political factions had never inspired the respect or trust of the Japanese people. Nevertheless the establishment of representative government in Japan required the intervention of a political party system. The problem was to encourage democratic practices in political party organization and activities. An appraisal of this task and an understanding of the manner and direction in which political parties developed during the first 2½ years of the Occupation requires a brief review of the historical background of political movements in Japan.

I. Historical Background

The limitations on political activity existing during the preconstitutional period may be readily summarized by noting that at the beginning of the Meiji era in 1867, a meeting of even two people for the discussion of a political matter was prohibited as a conspiracy, and that no individual was allowed to criticize the government or its officials. The introduction of western ideas of government during this period, however, generated some discontent among a segment of the population, fostered by a growing conviction that these new ideas should be adopted in Japan. This grew into a movement among a group outside of the government which criticized and attempted to challenge the power of the entrenched bureaucracy and the ruling clans, and which culminated in the establishment in 1880 of the first political party, the *Jiyu-to* or Liberal Party. The reaction of the ruling groups to this movement was the promulgation in 1881 of the Emperor Meiji's solemn pledge to establish a constitutional

government within 10 years. These two events marked the beginning of a political party activity and representative government in Japan

In 1882, a second political party, the *Kaishin-to* or Progressive Party was established. These two first political parties were practically identical in their statement of purposes, i.e., both aimed to prepare the people for a representative system of government, and on behalf of the people to watch over and prevent excesses by the government. The bureaucracy, understandably alarmed, countered with the establishment of a government-controlled party, the *Teisei-to* or Imperialist Party When this move failed to counteract the growing influence of the two non-government
law was ! which so restricted
activities the gro
functioning
Liberal Party
forced to dissolve
up, however, but
officially to strengthen
tion of the fulfillment of
pledge Consequently in
first general election and
the First Imperial Diet, they
tacks on the government grc
sult that the government finally
by making it possible for the
parties to reorganize In
Liberal Party assumed the new name
tutional Liberal Party or *Rikken*

These developments, along with
ing industrialization following
of western technology and the
the economic and social status of
classes, released the quiescent
workers and gave the first impetus to
lishment of a labor movement. Th
ment's reaction to this movemen
enactment and severe enforcement
Peace Police Law (1900)
labor activities. This law
ited, industrial workers and
from "agitating in their

against the employers and landowners," a
was subsequently interpreted to make a
labor movement a crime This repressive actio
by the government led on the one hand to t
establishment of an association to promote t
effectuation of universal suffrage and, on t
other, to the formation by labor leaders a
reformers of various groups for the study a
discussion of socialist theories since the me
study and academic discussion of such theori
was not at that time specifically prohibite
In 1901 a Social-Democratic Party was form
but was immediately disqualified as a politic
party by the government and subsequently w
transformed into the Socialist Associatio
which assumed championing t
of the wo
advent of and t

up
party
Liberal
The hopes
the day of
were
when the
to be
nation
and
of the
to
the
in the

SECTION XI

Political Parties

Introductory Statement

At the time of the surrender all organized political activity in Japan was carried out on a totalitarian, one-party basis under the auspices of the Great Japan Political Society, successor to the Imperial Rule Assistance Society. Shortly after the Occupation began the Great Japan Political Society dissolved itself and in its place arose a number of new parties of which the major ones represented regroupings of political forces around former leaders or influential members of the pre-Tojo political parties. Thoroughly unrepresentative of and unresponsive to the popular will, boss-dominated and venal, these old political factions had never inspired the respect or trust of the Japanese people. Nevertheless the establishment of representative government in Japan required the intervention of a political party system. The problem was to encourage democratic practices in political party organization and activities. An appraisal of this task and an understanding of the manner and direction in which political parties developed during the first 2½ years of the Occupation requires a brief review of the historical background of political movements in Japan.

I. Historical Background

The limitations on political activity existing during the preconstitutional period may be readily summarized by noting that at the beginning of the Meiji era in 1867, a meeting of even two people for the discussion of a political matter was prohibited as a conspiracy, and that no individual was allowed to criticize the government or its officials. The introduction of western ideas of government during this period, however, generated some discontent among a segment of the population, fostered by a growing conviction that these new ideas should be adopted in Japan.This grew into a movement among a group outside of the government which criticized and attempted to challenge the power of the entrenched bureaucracy and the ruling clans, and which culminated in the establishment in 1880 of the first political party, the *Jiyu-to* or Liberal Party. The reaction of the ruling groups to this movement was the promulgation in 1881 of the Emperor Meiji's solemn pledge to establish a constitutional

government within 10 years. These two events marked the beginning of a political party activity and representative government in Japan.

In 1882, a second political party, the *Kaishin-to* or Progressive Party was established These two first political parties were practically identical in their statement of purposes, i.e , both aimed to prepare the people for a representative system of government, and on behalf of the people to watch over and prevent excesses by the government The bureaucracy, understandably alarmed, countered with the establishment of a government-controlled party, the *Teisei-to* or Imperialist Party When this move failed to counteract the growing influence of the two non-government parties, a law was enacted which so restricted the normal activities essential to the growth and effective functioning of political parties that both the Liberal Party and the Progressive Party were forced to dissolve The Liberals did not give up, however, but continued their efforts unofficially to strengthen their ranks in anticipation of the fulfillment of the Emperor Meiji's pledge. Consequently in 1890, following the first general election and the convocation of the First Imperial Diet, they resumed their attacks on the government groups with the result that the government finally compromised by making it possible for the two dissolved parties to reorganize In September 1900 the Liberal Party assumed the new name of Constitutional Liberal Party or *Rikken Seiyukai*

These developments, along with the growing industrialization following the adoption of western technology and the dislocation of the economic and social status of the laboring classes, released the quiescent discontent of the workers and gave the first impetus to the establishment of a labor movement The government's reaction to this movement was the enactment and severe enforcement of a Public Peace Police Law (1900) suppressing organized labor activities This law specifically prohibited, industrial workers and tenant farmers from "agitating in their own interest and against the employers and landowners," and was subsequently interpreted to make any labor movement a crime This repressive action by the government led on the one hand to the establishment of an association to promote the effectuation of universal suffrage and, on the other, to the formation by labor leaders and reformers of various groups for the study and discussion of socialist theories since the mere study and academic discussion of such theories was not at that time specifically prohibited In 1901 a Social-Democratic Party was formed but was immediately disqualified as a political party by the government and subsequently was transformed into the Socialist Association which assumed the role of championing the cause of the working classes

The advent of the Sino-Japanese and the Russo-Japanese wars with the accompanying assumption of power by strong war cabinets and the stirring up of warlike enthusiasm among the people temporarily suspended the progress of political party movements until the fall of the Terauchi Cabinet in 1916 when Takashi Hara, Liberal Party leader, became Prime Minister The hopes engendered by this appointment that the day of nonparty administration was over, were fortified in the general elections of 1920 when the Liberal Party ob- tained an overwhelming majority. This hope, however, proved to be elusive. Immediately following the assassination of Hara in November 1921, his successor and the acknowledged deputy leader of the *Seiyukai*, [illegible] Takahashi, failed to maintain discipline [illegible] the party and consequently the Cabinet col- lapsed Furthermore, the development [illegible] sident factions within the *Seiyukai* [illegible] the loss of its Diet majority [illegible] formation of three nonparty [illegible] cession.

The situation may be [illegible] that in 1924—17 years [illegible] war with the United States—[illegible] system such as is found [illegible] cratic states had [illegible]

Comparative Suffrage Qualifications*

Election law revision dates	Electors				Candidates			
	Sex	Age	Property requirement	Residence requirement	Sex	Age	Property requirement	Residence requirement
1889	Male	25	To have paid more than ¥15 Direct National Tax for more than one year, or To have paid an income tax for more than three years.	1889: To have official residence as well as actual residence within prefecture for more than one year.	Male	30	Same as for elector.	None.
1902	Male	25	To have paid more than— 1. ¥10 Land Tax for more than one year. 2. ¥10 Direct National Tax, other than Land Tax for more than two years. 3. ¥10 of Land Tax and other Direct National Taxes for more than two years.		Male	30	None....	None.
1919	Male	25	To have paid more than ¥3 Direct National Tax for more than one year.	1919: Period reduced to six months.	Male	30	None....	None.
1925	Male	25	None.	1925: To register on elector list actual address within city, town, or village from which he voted for more than 1 year. (Period reduced to six months in 1934.)	Male	30	None...	None.

*The use of the phrase "UNIVERSAL SUFFRAGE" in connection with the suffrage qualifications noted above during the period from 1889 through 1942, is a misnomer in view of the fact that women did not have right to vote until the amendment of election laws in 1945.

II. Political Parties During the Occupation

1. Preliminary Phase

The groundwork for the revival of political activities and political parties was laid by the Supreme Commander's memorandum of October 4, 1945, directing the Japanese Government to remove restraints on freedom of thought, religion, assembly and speech, to release political prisoners, and to abolish the agencies engaged in carrying out measures or activities repressive of civil liberties.[1] Upon receipt of this directive the Higashi-kuni Cabinet resigned. The Prime Minister is reported to have stated at the time that he could not govern Japan without thought control and the thought police.

[1]See Appendix B: 2d, Removal of Restrictions on Political, Civil and Religious Liberties, SCAPIN 93, October 4, 1945.

By the end of November 1945, 33 political parties had been publicly organized, 30 of them in Tokyo. Party organizers had been extremely active in conducting meetings and demonstrations, and both holders of and prospective candidates for public office had shown marked interest in their first real opportunity to engage in unrestricted political activity. Political party platforms, however, were for the most part ambiguous. Some of the parties had not even formulated public statements of policy.

The first of the major parties to be formally inaugurated during the Occupation was the Social Democratic Party (*Nippon Shakai-to*) under the presidency of Komakichi Matsuoka, a long-time leader in labor movements. This party, whose membership in the Diet included 15 members, took the initiative in advancing specific proposals for dealing with national problems such as inflation, housing, administration of elections, extension of the franchise to women, protective labor legislation, and agricultural land reform.

On November 9, 1945, the Japanese Liberal Party (*Nippon Jiyuto*), with 50 members in the Diet, was inaugurated. This party was headed by veteran conservative political leaders. Its platform, however, was couched in general terms favoring woman suffrage, lowering the voting age, reorganization of the House of Peers, the Privy Council, the educational system, and bureaucratic reform. Its program reflected its conservative views on the Constitution and the powers of the Emperor by suggesting that the existing Constitution was democratic and did not require the transfer of powers from the Emperor to the Diet.

The third major party was formed on November 16 with the organization of the Progressive Party (*Shimpo-to*). This party, with 240 members in the Diet, was composed of a heterogeneous collection of old-line politicians belonging to the prewar *Minseito* and *Seiyukai* parties, most of whose members had been absorbed in the wartime Imperial Rule Assistance Association. Its platform had as yet not been specifically formulated, although its members indicated that they advocated the retention of economic controls by the government and opposed the Social Democrats by advocating an increase in compensation to landlords under the land reform bill.

The Communist Party, while not yet formally organized, had been extremely active since early part of October 1945 in advocating a popular front with the Socialists, expropriation of idle land and its redistribution to farmers, confiscation of industries, retirement of bureau heads, resignation of members of the House of Peers, investigation of war expenditures, and the elimination of the Emperor system.

The minor parties were politically insignificant and had failed to attract independent Diet members to their ranks. The "independent" group, however, increased in number, chiefly at the expense of the Progressive Party. During this early phase, most of the activity centered around the maneuvers of political leaders and Diet members. Popular participation was negligible, most people being concerned with the everyday problems of food, clothing and shelter and ignorant of or indifferent to political processes and their right to participate in them.

The "Civil Liberties Directive" of October 4, 1945, previously referred to, was followed by a memorandum of December 19, 1945, which directed the Japanese Government to restore civil rights (including the right to vote and to hold office) to former political prisoners released under the directive of October 4.[2] Most of these persons, numbering 434, had been imprisoned for activities, affiliations or beliefs considered subversive by the Japanese authorities. These released political prisoners were the first to take advantage of the freedoms conferred by the SCAP directives, and regardless of the subsequent defection of many of them from the advocacy of truly democratic or constructive principles, it may be observed that they

[2] Appendix B 2e, Restoration of Electoral Rights to Released Political Prisoners, SCAPIN 458, December 19, 1945.

contributed materially to the awakening of a much larger circle of Japanese people to the significance of political freedom.

The Japanese people in general are apathetic toward political affairs and are not accustomed to exercising individual initiative in political activity. Those in control, both in and out of the government, consisted mostly of old-line politicians and bureaucrats not sympathetic to new concepts and practices which might weaken their power and influence. Under such circumstances, without the active intervention of SCAP, progress toward the development of democratic organization and practices among the political parties would have been slow at best and might not have been realized during the Occupation. But certain actions of the Supreme Commander, not aimed directly at the problem of democratizing political practices, but designed generally to remove identifiable undesirable elements from positions of leadership in Japanese public life to make room for a leadership untainted by responsibility for Japan's previous aggressive policies, proved profoundly effective in the field of political party activities. The first of these was the so-called Purge Directive of January 4, 1946.* Nine days after this directive was issued three Cabinet ministers, six Cabinet executives and a number of other high government officials resigned because their records made them subject to removal from office under the terms of the directive. In March 1946, following a Cabinet interpretation of the clause in the directive which called for the removal of "additional militarists and ultranationalists," the entire political scene was altered by changes in political party leadership, shifts in political alliances and substitution of new candidates for those who had previously been slated to run in the general elections for the House of Representatives which were scheduled to be held the following month. All former members of the Diet who had been "recommended" by Prime Minister Tojo in the elections of 1942 were automatically disqualified for candidacy in the April 1946 election, and a large number of other candidates, most of them also old-line politicians or former government officials rooted in the old order, were disqualified following screening by the Japanese Government under the provisions of the purge directive. Simultaneously with the purge directive another memorandum was issued by SCAP directing the abolition of parties and other organizations whose character, objectives, or purposes tended to support militarism and ultranationalism and their attendant manifestations.* While this memorandum prohibited the formation or continuance of secret terroristic, militaristic, ultranationalistic and other antidemocratic organizations, and provided for the registration of political parties and other organizations and their filing of information whereby their nature and purposes could be disclosed, it specifically provided that it was not to be interpreted nor applied in such manner as to interfere with "freedom of assembly, speech or religion except with respect to the purposes and activities specifically mentioned [therein]."

In addition to the protection and encouragement extended to pro-democratic forces among the Japanese by the promulgation of the Civil Liberties Directives of October 4 and December 19, 1945, and the Purge Directive and Secret Societies Directive of January 4, 1946, the democratization of political activity was given a powerful boost on December 17, 1945, when the Japanese Government, with the encouragement and advice of General Headquarters amended the Election Law for members of the House of Representatives to provide for universal adult suffrage. Under the law as amended the right to vote was extended to women, the voting age was reduced to twenty years and the minimum age for candidates for the House of Representatives was reduced to 25 years.**

*See Section II, Removal of Ultranationalists.

**See Section X, Popular Elections.

Perhaps no single achievement of the Occupation or action of the Japanese Government, unless it be the new Constitution, may be pointed to as the major critical determining factor in political reform or the development of political consciousness among the electorate Nevertheless, let it be stated that the SCAP directives and the amendments to the Election Law described above were basic steps in liberating the Japanese people from regimentation under authoritarian controls and in accelerating the development of their political capacities

2. Political Effects of the Election of 1946

The stage was now set for the next important step—the replacement of the presurrender "lame duck" House of Representatives by democratically elected representatives whose selection reflected the free choice of the people Accordingly, on January 12, 1946, the following instructions (SCAPIN 584) were transmitted to the Japanese Government

"1. You are hereby authorized to hold a general election of members of the House of Representatives, fixing the date of election not earlier than March 15, 1946.*

to ensure their vigorous enforcement, to preserve inviolate the secrecy of the ballot, and to further such other safeguards as may from time to time be communicated to you by the Supreme Commander"

The ensuing period pending the final determination of the election date was characterized by preparatory activity by the government, political parties and political organizations Finally the Government announced that the general elections for the House of Representatives would be held on April 10, 1946

On the eve of the elections 2,500 so-called political parties with approximately 1,600 local branches had been registered, and 257 of them had nominated candidates. Subsequent analysis by Japanese government officials disclosed, however, that of the total 2,500 so-called political parties, only 278 could logically be considered as such, since practically all of the remainder turned out to be "one-man parties" consisting of independent candidates each of whom had a party consisting of himself and perhaps a few backers, and only 32 of the 257 parties which nominated candidates were successful in electing representatives.

The party alinements in the House of Representatives as a result of the 1946 elections were·

Liberal	139	People's Cooperative	14
Progressive	93	Communist	5
Social Democrat	92	Other minor parties	38
Independent	83	Disqualified	2
		Total	466

A contemporary analysis of the 1946 electoral campaign by Government Section officials led to the following conclusions.

1 The latent power of the electorate to effectuate basic reforms had been partly dissipated and misdirected by three main factors.

a General unfamiliarity with democratic concepts.

b. Lack of understanding of basic political, economic and social issues

c Difficulty in choosing among the multiplicity of parties and independent candidates whose stated objectives and platforms were ambiguous and sometimes interchangeable.

2 The power of political parties was dissipated by:

a A multiplicity of parties organized primarily on the basis of personal leadership rather than on political principles and policies and whose status was established solely by self-declaration rather than by any demonstration of public support.

b Internal conflicts in leadership and on party policy resulting in ambiguous platforms and policy statements resulting from compro-

*The date was set far enough ahead to allow the Japanese Government to complete the screening of important public officials and all candidates before election day

mises effected to hold dissident factions together.

c. Lack of definite programs for the solution of the political, social and economic problems of the country and lack of confidence in such programs as were advanced.

d. Lack of understanding and acceptance of democratic concepts and practices, with particular reference to the inter-relationships between the people and the political parties, the political parties and the Diet, the executive and judicial branches of government, and to the necessity of applying democratic principles in the administration of the parties themselves.

e. Political corruption.

The following editorial from the *Nippon Times* on April 6, 1946, which is typical of the sentiment of a large segment of the Japanese press before the elections, furnishes contemporaneous concurrence in the above conclusions:

"As the preelection campaigning swings into its closing days, it is disappointing to note that most of the candidates are not conducting their campaigns on the basis of the really fundamental national issues. The situation attests to a sad immaturity and inexperience on the part of the general electorate as well as on the part of the politicians.

"Most of the candidates are blithely promising the impossible, and they are all promising the same things in the same manner regardless of their party affiliations. They are for peace and democracy. They are all in favor of more food for the people. They are all opposed to inflation and in favor of faster reconversion and reconstruction. They all accuse the present Government of ineffectiveness. They all promise that if they are elected they will improve everything.

"But as to just exactly what measures they propose to advocate, as to just how they expect to put such measures into practical effect, as to what fundamental principles or social philosophy underlies their political views, as to how they differ from their opponents, there is very little being said. It is all sound and fury, and all of it is very vague and very general.

"All the things that the candidates are talking about can be taken for granted. They are the things upon which everyone agrees. They do not constitute any issue for debate. Everyone knows that all these things which are being promised are desirable. The question is how they are to be attained.

"The fundamental issues are, therefore, whether there is to be more government control in economic affairs; whether the reforms which everyone agrees upon as necessary are to be rushed vigorously or to be advanced cautiously; whether the interests of agriculture or of industry are to be placed first; whether 'sound' business or social reform is the more pressing immediate need of the nation. More specifically what the people ought to know are what ideas the candidate has about specific modifications of the proposed draft constitution, how determined the candidate is in the defense of the people's civil liberties, what specific taxes the candidate believes should be levied or abolished, just where he stands—on the right wing, slightly to the right of center, in the center, to the left of center, or clear over on the left wing.

"Yet instead of clarifying these points, most of the candidates merely promise that if they are elected they will in some unexplained manner force the government to increase the rice rations, curb inflation, speed reconstruction, and strengthen democracy—whatever that means. From their talk, all the candidates might as well belong to the same party.

"The fault does not lie with the candidates alone. The candidates would not dare confine themselves to such glittering generalities if the public demanded more specific commitments. But the public apparently does not know enough to demand more from its candidates. To be sure, there is general disrespect and cynicism toward the candidates, and there is a widespread mild deprecation of the hollowness of the political activities. But there is not burning indignation and no imperative demand for improvement. There is no irresistible force welling up from the public which impels a drastic change. And in the absence of such a force the public must shoulder a good part of the blame for the sorry state of Japanese politics. The inescapable conclusion must be that the Japanese people are still pretty far from being competent to carry on a real democratic government.

"The only consolation is that, despite all these shortcomings, the coming election will not be in vain. Democracy is not something which can be mastered in a day; it can only be acquired through experience. The sooner and the oftener the Japanese people go through such experiences the better will they learn. The coming election is the necessary first lesson, and the sooner it is gotten over with, the sooner will the Japanese public become ready to take the next and more advanced lesson. It is the necessary and desirable step to progress.

"But in the meantime, insofar as they are able to comprehend it, the Japanese people should realize how deficient their political abilities still are. And with this comprehension they may be able to squeeze the maximum profit out of their first lesson. As long as they are willing to learn, no matter how great their shortcomings, there is always hope. At least there is no evidence of any unwillingness to learn, and the prospects for democracy in Japan, therefore, though distant, must nevertheless be considered bright and encouraging."

Following the election of 1946 the president of the Liberal Party, Shigeru Yoshida, became Prime Minister, and his Cabinet then devoted its major effort toward drafting a new Constitution for Japan. The new Constitution was promulgated on November 3, 1946, to become effective six months later on May 3, 1947. The implementation of the new Constitution re-

quired drastic revision of the Japanese criminal and civil codes and other laws, the extension of local autonomy, as well as changes in the structure of government and in the relationships between the major branches of the government and between the government and the people; and in addition required extensive educational activities to acquaint the people with the significance of their new charter of civil liberties and its attendant reform measures

3. The Elections of 1947

By the end of 1946 it became evident that [illegible] people [illegible]sive to their needs and desires There had been demonstrations and near riots in protest against the Government's inertia in meeting the urgent economic and social issues pressing for solution. There were demands for reform of the government system and bureaucracy in the interest of clear policies and effectiveness in their execution. A general strike directed against the Government and scheduled for early February 1947 was averted only by the direct intervention of the Supreme Commander A new general election to give the people a chance to vote for new Diet members on the basis of the issues of the day was clearly in order. This need was explained by the Supreme Commander in a personal letter to the Prime Minister on February 6, 1947.[3]

Under chapter 8 of the new Constitution and its initial implementing legislation passed by the Diet in September 1946 which provided for greatly enhanced home rule in the local governments, new governors, mayors, headmen and assemblymen were to be elected in the kens, cities, towns and villages on or before May 3, 1947. Consequently, after making the necessary provisions and establishing the machinery for screening (under the purge directive) candidates at all levels, the Government announced that general elections would be held in April 1947.

The elections of 1947 are fully discussed in another section of this report [4] Certain significant aspects indicative of the development of political party movements and of the growth of political participation by the people will be noted at this point. In a series of elections held at intervals during the month of April the people of Japan for the first time in their history by universal suffrage elected not only the members of the House of Representatives but also the members of the second House of the Diet, as well as the chief executives and assembly members of their prefectural, city, town and village governments.

In the gubernatorial elections, 207 candidates contended 116 Independents, 34 Social Democrats, 13 Liberals, 6 Democrats, 9 Communists, 5 Peoples Cooperatives and 24 minor party candidates Thirty-two former governors ran for office, 22 of these other former public office holders were elected, 6 ex-governors were defeated, and 4 obliged to participate in run-off elections A tabulation of the votes cast for gubernatorial candidates indicated that nearly 54 percent went to Independents, 24 percent to Social Democrats, 8 percent to Liberals, 5 percent to Democrats and 1 percent each to the Peoples Cooperatives and the Communists The strong support accorded Independent candidates showed a tendency to choose local officials not because of party affiliation but because of previous administrative experience. Most of the governors who resigned their offices to run for election had campaigned under the label of independent, attracting numerous electors who preferred experienced executives, and thus swelled the nonpartisan total vote to the disadvantage of the parties.

At the national level the party alinements in the National Diet resulting from the 1947 election were as follows:

[3]Appendix E 5, General MacArthur s letter to Prime Minister concerning new elections, February 6, 1947.

[4]See Section X, Popular Elections.

mises effected to hold dissident factions together.

c. Lack of definite programs for the solution of the political, social and economic problems of the country and lack of confidence in such programs as were advanced.

d. Lack of understanding and acceptance of democratic concepts and practices, with particular reference to the inter-relationships between the people and the political parties, the political parties and the Diet, the executive and judicial branches of government, and to the necessity of applying democratic principles in the administration of the parties themselves.

e. Political corruption.

The following editorial from the *Nippon Times* on April 6, 1946, which is typical of the sentiment of a large segment of the Japanese press before the elections, furnishes contemporaneous concurrence in the above conclusions:

"As the preelection campaigning swings into its closing days, it is disappointing to note that most of the candidates are not conducting their campaigns on the basis of the really fundamental national issues. The situation attests to a sad immaturity and inexperience on the part of the general electorate as well as on the part of the politicians.

"Most of the candidates are blithely promising the impossible, and they are all promising the same things in the same manner regardless of their party affiliations. They are for peace and democracy. They are all in favor of more food for the people. They are all opposed to inflation and in favor of faster reconversion and reconstruction. They all accuse the present Government of ineffectiveness. They all promise that if they are elected they will improve everything.

"But as to just exactly what measures they propose to advocate, as to just how they expect to put such measures into practical effect, as to what fundamental principles or social philosophy underlies their political views, as to how they differ from their opponents, there is very little being said. It is all sound and fury, and all of it is very vague and very general.

"All the things that the candidates are talking about can be taken for granted. They are the things upon which everyone agrees. They do not constitute any issue for debate. Everyone knows that all these things which are being promised are desirable. The question is how they are to be attained.

"The fundamental issues are, therefore, whether there is to be more government control in economic affairs; whether the reforms which everyone agrees upon as necessary are to be rushed vigorously or to be advanced cautiously; whether the interests of agriculture or of industry are to be placed first; whether 'sound' business or social reform is the more pressing immediate need of the nation. More specifically what the people ought to know are what ideas the candidate has about specific modifications of the proposed draft constitution, how determined the candidate is in the defense of the people's civil liberties, what specific taxes the candidate believes should be levied or abolished, just where he stands—on the right wing, slightly to the right of center, in the center, to the left of center, or clear over on the left wing.

"Yet instead of clarifying these points, most of the candidates merely promise that if they are elected they will in some unexplained manner force the government to increase the rice rations, curb inflation, speed reconstruction, and strengthen democracy—whatever that means. From their talk, all the candidates might as well belong to the same party.

"The fault does not lie with the candidates alone. The candidates would not dare confine themselves to such glittering generalities if the public demanded more specific commitments. But the public apparently does not know enough to demand more from its candidates. To be sure, there is general disrespect and cynicism toward the candidates, and there is a widespread mild deprecation of the hollowness of the political activities. But there is not burning indignation and no imperative demand for improvement. There is no irresistible force welling up from the public which impels a drastic change. And in the absence of such a force the public must shoulder a good part of the blame for the sorry state of Japanese politics. The inescapable conclusion must be that the Japanese people are still pretty far from being competent to carry on a real democratic government.

"The only consolation is that, despite all these shortcomings, the coming election will not be in vain. Democracy is not something which can be mastered in a day; it can only be acquired through experience. The sooner and the oftener the Japanese people go through such experiences the better will they learn. The coming election is the necessary first lesson, and the sooner it is gotten over with, the sooner will the Japanese public become ready to take the next and more advanced lesson. It is the necessary and desirable step to progress.

"But in the meantime, insofar as they are able to comprehend it, the Japanese people should realize how deficient their political abilities still are. And with this comprehension they may be able to squeeze the maximum profit out of their first lesson. As long as they are willing to learn, no matter how great their shortcomings, there is always hope. At least there is no evidence of any unwillingness to learn, and the prospects for democracy in Japan, therefore, though distant, must nevertheless be considered bright and encouraging."

Following the election of 1946 the president of the Liberal Party, Shigeru Yoshida, became Prime Minister, and his Cabinet then devoted its major effort toward drafting a new Constitution for Japan. The new Constitution was promulgated on November 3, 1946, to become effective six months later on May 3, 1947. The implementation of the new Constitution re-

quired drastic revision of the Japanese criminal and civil codes and other laws, the extension of local autonomy, as well as changes in the structure of government and in the relationships between the major branches of the government and between the government and the people; and in addition required extensive educational activities to acquaint the people with the significance of their new charter of civil liberties and its attendant reform measures.

3. The Elections of 1947

By the end of 1946 it became evident that the Yoshida government lacked sufficient public support or approval to permit it to be considered representative of the people or responsive to their needs and desires. There had been demonstrations and near riots in protest against the Government's inertia in meeting the urgent economic and social issues pressing for solution. There were demands for reform of the government system and bureaucracy in the interest of clear policies and effectiveness in their execution. A general strike directed against the Government and scheduled for early February 1947 was averted only by the direct intervention of the Supreme Commander A new general election to give the people a chance to vote for new Diet members on the basis of the issues of the day was clearly in order. This need was explained by the Supreme Commander in a personal letter to the Prime Minister on February 6, 1947 [3]

Under chapter 8 of the new Constitution and its initial implementing legislation passed by the Diet in September 1946 which provided for greatly enhanced home rule in the local governments, new governors, mayors, headmen and assemblymen were to be elected in the kens, cities, towns and villages on or before May 3, 1947. Consequently, after making the necessary provisions and establishing the machinery for screening (under the purge directive) candidates at all levels, the Government announced that general elections would be held in April 1947.

The elections of 1947 are fully discussed in another section of this report.* Certain significant aspects indicative of the development of political party movements and of the growth of political participation by the people will be noted at this point. In a series of elections held at intervals during the month of April the people of Japan for the first time in their history by universal suffrage elected not only the members of the House of Representatives but also the members of the second House of the Diet, as well as the chief executives and assembly members of their prefectural, city, town and village governments.

In the gubernatorial elections, 207 candidates contended 116 Independents, 34 Social Democrats, 13 Liberals, 6 Democrats, 9 Communists, 5 Peoples Cooperatives and 24 minor party candidates Thirty-two former governors ran for office, 22 of these other former public office holders were elected, 6 ex-governors were defeated, and 4 obliged to participate in run-off elections A tabulation of the votes cast for gubernatorial candidates indicated that nearly 54 percent went to Independents, 24 percent to Social Democrats, 8 percent to Liberals, 5 percent to Democrats and 1 percent each to the Peoples Cooperatives and the Communists The strong support accorded Independent candidates showed a tendency to choose local officials not because of party affiliation but because of previous administrative experience. Most of the governors who resigned their offices to run for election had campaigned under the label of independent, attracting numerous electors who preferred experienced executives, and thus swelled the nonpartisan total vote to the disadvantage of the parties.

At the national level the party alinements in the National Diet resulting from the 1947 election were as follows.

[3]Appendix E. 5, General MacArthur's letter to Prime Minister concerning new elections, February 6, 1947

*See Section X, Popular Elections.

come of new-yen
of the new yen.
epted these counter-
ing 10-point policy
demands of all the
ed as the basis for a
nment, including the

ntrols in accordance
plans based upon the
a of the nation
t of key industries only
t a concentrated indus-
asing production Past
lished in favor of demo-

(1) State control

(2) Democratic

(3) Cooperation

overy through voluntary
al and labor
ce to cope with inflation
, only whenever necessary
n inflation profiteers from

be suspended
control over wages and prices
cessities placed under strict ra-
bilize the livelihood of the people

e of increasing food production
ck-marketing to be eliminated for
ose of industrial recovery and for stab-
n of the people's livelihood
Strengthening and improvement of land
arine transportation

oshida,
19, the
pressed
commitment from Katayama that not
would left-wing members of the Social Democratic Party be excluded from the projected cabinet, but that the party rid itself of its left-wing elements Katayama agreed to exclude leftists from cabinet membership, but the Social Democratic Party Executive Committee would not consent to expel its left-wing members nor would it agree that the left-wing supporters should be driven from the party These unexpected demands destroyed the prospects for a four-party coalition government The Democrats and People's Cooperatives adhered to their position that Katayama as leader of the plurality party was entitled to organize the cabinet During an evening session of the Diet on May 24, 1947, Katayama was designated Prime Minister, receiving 420 of the 426 votes cast in the House of Representatives, and 205 of the 207 cast in the House of Councillors Even the Liberals had voted for Katayama The task then remained for Prime Minister Katayama, who was invested by the Emperor on the following afternoon, to select the members of his cabinet For the time being he temporarily held all portfolios

On May 31, 1947, the Prime Minister announced the formation of a cabinet consisting of 7 Social Democrats, 7 Democrats and 2 People's Cooperatives Thus was formed a three-party coalition government bound by a policy statement arrived at after bargaining among the four major parties, one of which at the last minute failed to join. To achieve agreement the Social Democratic Party had sacrificed important planks of the platform on which its candidates had run and had agreed to exclude an influential faction of its members from the Cabinet

Although the Liberal Party stayed out of the government, it did not immediately go into open opposition. In fact the statement was made that the Liberal Party would not actively oppose the government's program so long as the government adhered to the four-party policy agreement. This promise was not kept, however, and before long the Liberal Party was seen striving for the downfall of the Kata-

yama Cabinet both openly by opposing and criticizing the Government's program and administration and covertly through political manipulations to reduce the coalition's working majority in the Diet.

Only 4 months after the formation of the Katayama Cabinet there were indications that the existing political alinements and forces were such as to limit the life expectance of the coalition government led by the Social Democrats to a fairly short span of time. A Government Section report dated September 19, 1947, furnishes a contemporary view of the political situation:

"Subject: Impending Political Crisis

"1. Political developments have reached the period of impending crisis.

"2. Fundamental differences in basic political ideologies and policies of administration have created dissension within major party ranks and are resulting in a realignment of political forces.

"3. A struggle for power to control Japan's political and economic destiny is being and will be waged between two major aggregations of political forces whose composition cuts across party lines.

"4. These forces may be described as the conservative bloc and the socialist bloc.

"5. The conservative bloc advocates laissez-faire capitalism, modified in periods of extreme emergency by limited state control of key industries under private ownership.

"6. The socialist bloc advocates state socialism under democratic processes on various modifications of socialism ranging from

"a. State ownership of all key industries and control over spheres of activity affecting the public welfare, to

"b. Rigid state control of all key industries under private ownership with limited control over spheres of activity affecting the public welfare.

"7. Specifically, the Social Democratic Party is in the untenable position of failing to define its long-term policy with respect to those two related, but basically incompatible, theories of state socialism. This situation is also aggravated by the fact that the Social Democratic Party is apparently split into four factions:

"a. One faction advocates state ownership of all key industries and state control over spheres of activity affecting the public welfare now and in the future;

"b. The second faction advocates state control of all key industries under private ownership, with limited control over spheres of activity affecting the public welfare now and in the future;

"c. The third faction advocates a continuation of the present policy of limited state control of certain key industries under private ownership and limited control over spheres of activity affecting the public welfare now with the objective of eventually achieving rigid state control of all key industries under private ownership, with limited control over spheres of activity affecting the public welfare;

"d. The fourth faction adopts the policies of the third faction as the first two steps in its program towards pure socialism as advocated by the first faction.

"8. This diversity of opinion not only complicates the relations between the leaders of the Social Democratic Party but prevents their concentration on the implementation of a common program.

"9. Furthermore, the failure of the Social Democratic Party to commit itself to any one of these clearcut alternatives is weakening its position among the informed electorate, and, conversely, its failure to inform the general public of these alternatives has prevented the development of public opinion which would serve as a guide to party officials in the determination of its current and eventual policy.

"10. This situation is hazardous in that it sets a premium upon leadership based upon personalities rather than upon advocacy of definitive policies; it perpetuates the necessity of compromises based upon expediency, and plays into the hands of special interest groups which, if they do not usurp leadership and power politically, will definitely exert a preponderant influence. This latter fact is clearly evident in union activities with particular reference to unions of government employees who have and are exercising power which similar organizations have never had and do not have in the United States.

"11. Political, social and economic conditions in Japan justify and warrant the coexistent rivalry of political forces advocating laissez-faire capitalism on one hand and state socialism under democratic processes on the other. They do not warrant the development of a political force advocating communism, even to the extent of a militant policy influencing minority groups.

"12. Communism by self-determination in Japan is a definite impossibility in this generation, at least, and highly improbable in future generations if successive democratic governments, regardless of whether they belong to the conservative bloc or the socialist bloc, are able effectively to resolve current economic and social problems and establish a culture which gives every Japanese citizen an opportunity to enjoy a constructive and happy life under the protection of the new Constitution.

"13. It is ironic that the leaders of the Social Democratic Party who have demonstrated to date that they are fundamentally sympathetic with democratic ideals and processes should themselves be jeopardizing the attainment of these ideals and the perpetuation of these processes by their dissension, indecision and apparent lack of foresight and courage."

Two months later in November 1947, amidst mounting public dissatisfaction with repeated delays and ineffective compromises in the solution of pressing public issues, reflecting continuous conflicts within the Cabinet, there appeared a number of public statements by political party officials regarding possible political

realinements. In this connection a Government Section report observed that

"... the formation of a new party by the consolida- [illegible]

The impending crisis came to a head early in 1948. The four-party policy agreement, on which the coalition government stood, called for moderate policies of economic reconstruction with state control where necessary Suspension of interest on war bonds and monetary freezing had been expressly forbidden At the Social Democratic Party's national convention late in January, the left-wing members of the party, charging that the coalition agreement, which had already been repudiated by the Liberals, prevented adoption of vigorous emergency economic policies, succeeded in obtaining repudiation of the agreement by the party's convention and the adoption of a resolution calling for suspension of interest payments on war bonds and opposing increases in postal or railway rates.

The Liberals then intensified their efforts to wean conservative members away from the government camp to a projected new centrist party to include the People's Cooperatives and others. The People's Cooperatives preferred to remain as a separate party but to continue in alliance with the Democrats and Social Democrats.

On January 29 the government introduced into the Diet a supplementary budget bill providing for a 100 percent increase in postal and railway rates to raise revenue to cover payment of a special cost-of-living allowance to government workers previously agreed to with the workers' unions.

The left-wing group of the Social Democratic Party in the Diet opposed the proposed postal and railway rate increases The Liberal Party joined the opposition to the increases which it termed a menace "to the livelihood of the masses" Party discipline failing to move the left wingers' opposition, the government on February 5 announced that it would withdraw the budget bills and formulate new ones, but before the government could act on this decision, the House of Representatives' Budget Committee approved a resolution demanding that the bills be withdrawn. Demands arose from both the Democrats and the conservative members of the Social Democratic Party, that the left-wing Social Democrats be expelled But they were too strong to expel without destroying the party and the coalition The resignation of the Katayama Cabinet was tentatively decided by the Prime Minister at a cabinet meeting on February 8 On February 10, Prime Minister Katayama resigned with the statement that.

"In view of the prevailing situation I have decided today on the resignation of the Cabinet I believe this is a large manifestation of the difficulties of the internal [illegible]

There followed 11 days of political wrangling and maneuvering over the election of a new prime minister The Liberals requested the Democrats and People's Cooperatives to join a Liberal-headed coalition, the Democrats rejected the offer, the People's Cooperatives demurred On February 16, the Democratic Party formally invited the Social Democrats to join a coalition cabinet headed by Hitoshi Ashida The Social Democrats, meanwhile, had composed its internal differences and had taken action to maintain party unity in the future. The Liberals denounced the Democrats' plan as a scheme to "rotate the prime ministership among the government parties." They charged that all the government parties were equally responsible for the failure of the Katayama Cabinet and insisted that under "constitutional principles" when a cabinet resigned it [illegible] to designate the

leader of the chief opposition party as prime minister. The negotiations between the Democrats and Social Democrats continued.

On February 21, the Central Executive Committee of the Social Democratic Party offered to support Katayama but he countered with the opinion that in the circumstances he could not succeed himself. Thereupon, the committee agreed to support Ashida for the premiership.

On February 22, the House of Representatives designated Ashida on the first ballot with 216 votes out of 421 cast. In the House of Councillors no candidate received the required majority on the first ballot. Out of the 218 votes cast, Yoshida received 101 and Ashida 99. A run-off election between the two leading contenders resulted in 104 votes for Yoshida and 102 for Ashida. Following prolonged negotiations, the presiding officer ruled that Yoshida had received a majority of the votes and should be considered the prime minister-designate of the House of Councillors. A joint committee of the two Houses then met to effect agreement, but failed. On February 23, the Speaker of the House of Representatives reported before a plenary session that as a result of failure by the joint committee to settle the disagreement, the designation of the House of Representatives became the decision of the Diet under Article 67 of the Constitution. Hitoshi Ashida was thus formally designated as prime minister. It was indicated, however, that he would not assume office until members of his Cabinet had been appointed. Until that time the Katayama Cabinet would continue to function.

On March 9, 1948, Ashida announced the formation of a coalition cabinet consisting of seven Democrats, including himself, eight Social Democrats, and two People's Cooperative Party members. Like its precedessor, the Ashida Cabinet was formed on the basis of a predetermined policy agreement. In view of the marked improvement in definiteness of statement and specification of policy over the preceding 10-point, 4-party policy agreement under which the Katayama Cabinet had been formed, the Ashida coalition agreement merits attention. The Tripartite Policy Agreement as announced on March 3, 1948, by the Social Democratic, Democratic and People's Cooperative Parties included the following points:

Political

Faithful observance of the Potsdam Declaration.
Democratic readjustment of the nation's internal position.
More foreign loans.
More foreign capital.
Acceleration of industrial rehabilitation.
Stabilization of the people's livelihood.
Democratization of central and prefectural administrative machinery.
Renovation of the government service.
Election Law revision.
Corrupt practices act.
Support of Illegal Property Transactions Special Committee.
Elevation of ethical standards.
Education reform.
Enforcement of the 6–3 system.
Workmen's education by part time schools.

Economic

Two-year plan for production increase.
Sound finance.

Countermeasures against Inflation

Curtailment of expenditures.
Stronger tax collection machinery.
Prevention of tax-evasion.
Equitable distribution of the tax burden.
Possible suspension of interest payment on war bonds.
Reduction in income taxes for laborers and farmers.
Rationalization of special accounts for government railways and communications system.
Reduction of corporation taxes.
Addition of property tax and other new taxes.
Democratization of banking institutions.
Revision of the Bank of Japan Law.
Democratization of the Reconstruction Finance Corporation.

Measures for Production Expansion

Priority to vital industries.
State control of coal mines.
Over-all land-and-sea transportation plan.
Unitary operation of electric power and industry.
Possible state control of petroleum, steel, fertilizer, etc.
Abolition of inefficient bureaucratic controls.
Issuance of production bonds.
Encouragement of voluntary cooperation of labor unions.

Support of Labor Union Law, the Labor Administration Law and the Labor Standard Law
Rational wage system
Administrative readjustment and industrial reorganization
Public works for land conservation and flood control
Increase of food production
Democratization of delivery control system
Farmland reform
State-operated farms for land reclamation
Establishment of an Agriculture-Forestry Rehabilitation Bank
Fostering of agricultural cooperatives
Establishment of a Small and Medium Enterprises Board
Promotion of democratic cooperative unions
Utilization of hoarded commodities

Social

Large-scale housing construction at state expense
Utilization of idle grounds and houses, high-class restaurants and big residences
Establishment of a Housing Board and a Housing Committee.
Realization of the Consumer Livelihood Cooperative
Repatriation of Japanese nationals
Relief measures for war sufferers
Public works for unemployment relief
Extension of the unemployment insurance system

It is interesting to note that this three-party agreement represented considerable concessions on the part of Prime Minister Ashida, in that it incorporated statements of major policies previously advocated by the Social Democratic Party but opposed by the Democratic Party This "flexibility" in matters of policy in order to meet political necessity is further demonstrated by the inclusion in the new Cabinet of Kanjo Kato, as Minister of Labor, and Masaru Nomizo, as State Minister and Chairman of the Local Finance Committee Both of these men were members of the left-wing faction of the Social Democratic Party This inconsistency appears even more marked when it is recalled that during the formation of the Katayama Cabinet in 1947, Ashida as one of the conditions for joining the Katayama Cabinet, had insisted on assurances from Katayama that no member of the left-wing faction of the Social Democratic Party be appointed to a Cabinet post Thus in 1947 Katayama, leader of the Social Democratic Party, had been forced in order to compose his coalition government, to exclude left-wing members of his party from the Cabinet, thus sowing seeds of intra-party discord which was later to contribute to the downfall of his government One year later his successor, leader of the more conservative Democratic Party, for the same reason placated that faction both by including two of its members in the Cabinet and by incorporating some of their objectives in the coalition government's policy agreement This extreme flexibility illustrates the tangled maze of personalities, political cross currents and compromise which fashion current Japanese politics

The following tables indicate the political alinements following the election of 1947 and formation of the Ashida Cabinet in 1948

Comparative Analysis of Political Alinements in the House of Representatives Since the Election of April 1947

Strength

Political designation	Ashida Cabinet		Katayama Cabinet	Remarks
	May 7, 1948	Mar. 16, 1948[1]	June 23, 1947[1]	
Democratic-Liberal Party	152	153	125	Obtained 7,295,242 votes or 26.7 percent of total vote cast, under name of Liberal Party.
Social Democratic Party	123	122	144	Obtained 7,168,888 votes or 26.2 percent of total vote cast.
Democratic Party	82	90	128	Obtained 6,857,480 votes or 25.1 percent of total vote cast.
People's Cooperative Party	30	29	31	Obtained 1,862,753 votes or 6.8 percent of total vote cast.
Social Renovationist Party	21	20	Nonexistent	Faction split off from Social Democratic Party.
Independent Club	9	10	16	Members elected as independents.[2]
Japan Farmers Party	7	7	8	Obtained 258,854 votes or 0.009 percent of total vote cast.[3]
Japan Liberal Party	6	6	Nonexistent	Faction split off from Democratic Party.
Communist Party	5	4	4	Obtained 1,002,883 votes or 3.7 percent of total vote cast.
Nonaffiliated:				
True Independents	8	5	2	Elected as independents.[2]
Vacancies	19	20	–	Resignations, deaths or disqualifications.

Explanatory Notes

1. Immediately after formation of Cabinet.

2. The 128 elected independent candidates (23 in the House of Representatives and 105 in the House of Councillors) obtained [illegible] votes or 5.8% of the total vote cast, and only 3 of these independents (2 in the House of Representatives and 1 in the House of Councillors) retained their status by the convocation of the Diet on June 23, 1947, immediately after the elections, the rest having already affiliated themselves with one of the successful political parties or the independent (bargaining) groups. At the present time there are 5 nonaffiliated independents in the House of Representatives and 4 in the House of Councillors, and 3 bargaining clubs, 1 in the House of Representatives with 10 members and 2 in the House of Councillors with a total of 103 members.

3. The Japan Farmers Party is the only one of the 30 minor parties successful in the election (19 in the House of Representatives and 12 in the House of Councillors) which has retained its identity, the others having dissolved and their members affiliated themselves with other parties or independent bargaining groups. However, it is interesting to note that this party only elected 3 representatives, the other 5 joining the party subsequent to election but prior to the convocation of the Diet, immediately following the election.

PARTY MEMBERSHIP

Party	Branch offices, April 2, 1948	December 1946	April 1947	July 1947	March 1948	April 1947 Votes recorded	Percentage	Contributions reported January–December 1947	
Democratic Liberal .	223	10,097	17,358	23,566	37,966	7,295,242	26.7	Hq	¥ 7,342,400
								Br.	4,945,474
								Total	12,287,874
Social Democratic	591	60,183	73,847	93,242	98,906	7,168,888	26 2	Hq.	572,100
								Br	2,218,010
								Total	2,790,110
Democratic	164	6,435	8,841	15,007	18,898	6,857,480	25 1	Hq	2,497,474
								Br.	3,609,515
								Total	6,106,989
People's Cooperative	77	3,537	4,776	5,545	5,652	1,862,753	6 8	Hq	818,181
								Br	843,700
								Total	1,640,510
Communist. . . .	214	8,683	12,072	16,144	18,088	1,002,883	3 7	Hq	4,905,316
								Br	8,642,785
								Total	13,548,101

(Above statistics based upon official goverment reports)

COMMENTS

1. The Communist Party was first in the amount of financial contributions reported received, third in the number of branch offices, only 9 less than the Democratic-Liberals but more than the Democratic Party (at least one in every prefecture), fourth in reported membership, only 900 less than the Democratic Party and half of the Democratic Liberal Party, and was last in the percentage of votes received, only 3 7 percent.

2. The socialist bloc (the Social Democrats and Peoples Cooperative) was first in number of branch offices, with a total of 668 as against a total of 387 for the conservative bloc (the Democratic-Liberals and the Democrats), first in the number of reported members with a total of 104,558 as against 46,846 for the conservative bloc, but second in the votes received in April 1947 with a total of 9,031,641 as against a total of 14,152,722 for the conservative bloc, and a very poor second in the amount of contributions received with a total of ¥4,430,620 as against a total of ¥18,394,863 for the conservative bloc

SIGNIFICANT POINTS

a The Communist Party is extensively organized and well fortified by funds, half of which are collected by the local branches

b The socialist bloc, impoverished financially, is most intensively organized, with maximum dispersion.

c The conservative bloc commands a clear majority of electora votes with 51 8 percent of the total vote cast as against 48 2 percent for the socialist bloc, the Communists, other minor parties and independent candidates combined, and possesses by far the greatest amount of financial backing

5. Incipient Mass Movement

The elections of 1946 and 1947 in Japan inaugurated a period of unprecedented freedom fostering the growth of political consciousness in the people Under the stimulus of reform measures enacted by the Japanese government pursuant to the Supreme Commander's instructions or advice for the institution of democratic processes, the Japanese people reacted enthusiastically with the result that over 72 percent of the nation's eligible electors participated in the elections of 1947 In the 1946 election women showed unexpected political interest and potentialities. In the 1947 elections their political activity and influence increased at all levels of government. They utilized fully their first opportunity to participate as voters and candidates in the elections for the House of Councillors and for the chief executives and legislative assembly members of all local government posts. This manifestation of an awakening political consciousness was an indication of the political potential of the Japanese elec-

the economic, social and political conditions in an effort to identify every possible public issue with particular reference to those which are a source of discontent among the working people, and has incorporated them in the form of specific corrective proposals as planks in a detailed platform. The Communist Party maintains an incessant barrage of criticism against the Government, the other political parties and particular officials thereof in a campaign to lower their prestige and to fan public discontent and impatience These attacks are threefold in form and usually concurrent (1) They attack the propriety, adequacy and priority of the measures proposed or undertaken, (2) they attack the competency and efficiency of government officials; and (3) they attack the motives of the party factions in the Diet and the Government collectively, and Diet members, government officials and political party leaders individually Communist party members who are generally conversant with the concepts and processes of democratic government and glib in the use of its characteristic terminology, assume leadership in instructing the uninitiated, and exploit their knowledge by perverting their interpretation of democratic concepts and processes whenever convenient or in accordance with the current "party line" They have a ready answer as to the causes of issues creating public discontent And finally, they lead, instigate and otherwise abet discontented groups, most of whose members are politically confused, into taking improper and often illegal action, or action which, if legal and not democratically improper, is nevertheless highly detrimental to the general public welfare.

For example, Communists were active in the May Day food riot in 1946 and in the threatened general strike of January 1947 which was called off after SCAP's intervention They were also active as recently as April 1948 in connection with the Korean riots in Kobe and Osaka which resulted in the declaration of a state of limited emergency in those areas by the commanding general of the United States Eighth Army

The Communist influence within the labor unions is of special importance The 29,378 unions now existing in Japan—29,346 in private industry and 32 in government bureaus—command a total membership of 6,243,117, or 7½ percent of the total population of Japan Of these, 1,744,832 are government and municipal employees. Granted that organized labor has legitimate grievances and justification for demanding improvement in working conditions and the economic status of workers, the influence of Communist-inspired action has served as a deterrent in achieving these ends and has injected a generally discordant, factious and disorganizing element in government and industrial relationships Recognizing the dangers inherent in this situation, the two chief labor organizations in Japan, the National Congress of Industrial Unions and the Japan National Federation of Labor, have launched democratization drives and established a "Democratization League," designed to oust all Communist cell activities from labor unions

III. Problems of Political Reconstruction

The two electoral campaigns had revealed a number of practices in the organization and operations of political parties which tended to defeat the objective of democratizing political activities. Reform of these practices was undertaken through informal [illegible]
Home Ministry in the [illegible]
Government Section [illegible]
recognition of the [illegible]
necessity for their [illegible]

The subject matter covered in these various conferences referred to the principles and philosophy of the purge, election procedure, reform of criminal procedure, the new constitution, civil liberties and other major governmental problems. These statements were not exhaustive, nor do they include all possible subjects of political education.

"They do include, however, certain basic conceptions and values which would be useful in the development of any educational program by the parties. The suggestion that I wish to submit for discussion this morning is the possibility of developing a cooperative program on a nonpartisan basis on the fundamental elements of political education which should be disseminated to the public. This program should in no way be construed as affecting the rights of the individual parties to conduct their own educational program insofar as particular issues are concerned. The scope of the suggested program is limited to those ideas and suggestions to the public which are noncontroversial, namely, the obligations of the people and their rights under a democratic form of government, the manner in which they can bring their criticisms to the attention of the parties and the government. In other words, if by a cooperative effort on the part of the parties here represented we could develop a common denominator of information in which there is no partisan issue, then the efforts and energies of all the parties could be devoted to the dissemination of that information for the mutual benefit of all."

The Japanese party representatives expressed unanimous agreement as to the need for such a program and undertook to present suggestions to their respective parties, coincident with the opening of the new Diet session on June 23, for the selection of a working committee to develop plans. Following this and subsequent meetings there was inaugurated on August 25, 1947, the "League of Political Education for Democracy" composed of over 100 Diet and non-Diet members representing both major and minor parties and independents as well as professional and social groups. Two Social Democrats, Komakochi Matsuoka, Speaker of the House of Representatives, and Jiichiro Matsumoto, Vice President of the House of Councillors, were elected president and vice president of the League. Among the directors were Chief Cabinet Secretary Suehiro Nishio, a Social Democrat, and the vice speaker of the House of Representatives, Manitsu Tanaka, a Democrat. The Government Section, in collaboration with the Civil Information and Education Section of General Headquarters, SCAP, actively assisted the league in the program by advising on plans for wide-scale political educational measures.*

Concurrent with the political education program the representatives of the major political parties undertook consideration of legislative measures by studying the draft of the proposed political parties bill prepared by the previous Cabinet together with the recommendations advanced by the Government Section. The original informal committee composed of members representing the major parties, in June 1947 invited representatives of the minor parties and independents to join in the study. This committee was succeeded by a special committee on political parties and election laws established in the House of Representatives with the "aim to foster and build up a sound and democratic political party system and establish democratic election processes."

The first draft of a proposed political parties' bill submitted by the House Committee to the Government Section for criticism and advice was found deficient in several important respects. It lacked effective provisions against corrupt practices; it failed to establish adequate election administration machinery; it failed to provide against shifts of party memberships during periods of cabinet formation; it failed to recognize local parties; it applied no restrictions to independent candidates; it discriminated against the House of Councillors; and it made no provision for a printed ballot.

The Government Section, at a conference on November 5, 1947, with members of the political parties' subcommittees of the two Houses of the Diet, advised the Japanese representatives that the Diet was completely free to enact or not a political parties' bill, but if it did, and if the bill was to accomplish the purpose for which it was intended, then it should incorporate certain principles previously recommended by the Government Section. If qualifying restrictions governing political parties

*See section XII, Political Education.

and independent candidates were adopted such restrictions should be inclusive, applying to all political elements such as national parties, local prefectural parties, and independent candidates, and such restrictions should be equitable and should apply uniformly to all pertinent elements. Second, complete and effective anti-corrupt practice provisions and penalties should be incorporated either in a political parties' bill or amendments to the election laws. Third, a national election administration commission should be established to supervise elections, to enforce anti-corrupt practices provisions and to handle other functions concerning elections and political activities heretofore handled by the Home Ministry which was about to be dissolved. Lastly, a printed ballot was desirable if found feasible.

Illustrating the worth of the conference method in dealing with the Japanese on matters of political reform, this conference proved fruitful in that one month later, on December 7, 1947, the Diet passed a Government-sponsored bill establishing a National Election Management Commission based in general on the recommendations put forth by the Government Section.[4] Some significant aspects of this law are:

1. It concentrates all responsibility for the supervision of political parties and election administration machinery in an independent commission, the chairman of which is responsible directly to the Prime Minister.

2. The commissioners are nominated by the political parties in the Diet, designated by joint resolution of the Diet, and automatically appointed by the Prime Minister, thereby providing inter-party checks and balances and requiring the acceptance of joint responsibility.

3. It authorizes the commission to obtain reports and other data from government organs, national and local, as well as political parties and associations, and to promulgate rules and regulations considered necessary for the execution of its business.

The National Election Management Commission immediately began studies for further revision of the election laws and for the preparation of anti-corrupt practice provisions as well as the compilation of accurate election statistics. Four months later it produced a "Bill Concerning the Regulation of Political Contributions and Expenditures" which was found acceptable by General Headquarters and which the Commission, relinquishing its claim to authorship, offered to the House of Representatives' special committee on political parties and election laws as the basis for a member bill. The committee set aside its own former draft and accepted the one submitted by the Commission. This bill with some minor modifications and refinements was passed by the House of Representatives on April 30, 1948.[5] It meant all of the minimum and some of the optimum standards recommended by Government Section and may be considered a significant contribution to political reform in Japan. In June 1948 the National Election Management Commission and the Special Committee of the House of Representatives were both engaged in preparing further revisions of the election laws and amendments to the Political Parties' Bill.

IV. Appraisal

The changes in the political structure of Japan wrought during the first 2½ years of the Occupation may be fittingly described as a revolution. During that brief period, government based upon divine right gave way to one based on the will of the governed. The people,

[4] Appendix H: 26, National Election Management Commission Law, Law No. 154, December 7, 1947.

[5] Appendix H: 43, Bill concerning the Regulation of Political Contributions and Expenditures, Law No. 194, July 29, 1948.

formerly subjects, became citizens with the right to determine how and by whom they should be governed. The totalitarian political, governmental and administrative machinery by which the Japanese people were ruled was demolished. In its place was erected a system of social justice, individual liberty and respect for the essential rights of man within the framework of democratic institutions founded upon an enlightened constitution. By SCAP action or governmental orders based on SCAP directives the war leaders and their influential supporters were removed from positions of leadership in public life. In the course of two great popular elections in which an overwhelming majority of the greatly enlarged electorate participated, many other old leaders were replaced by newcomers more keenly aware of the trends of the times and responsive to the needs and desires of the people.

All this is not to say that Japan today is a mature democracy, in which the formal structure of representative government is supplemented by genuinely competitive, popularly supported and democratically run political parties effectively mobilizing and leading the political power of the voters toward constructive ends. Political party activities in Japan today still display a number of the very deficiencies and vices which once before brought them into disrepute and eventually reduced them to impotence. Equally disturbing is that far too many people in Japan accept these conditions with equanimity, as if government and political activities were still matters beyond their ken or their power to influence. Yet this was to be expected, for the tough hard core of custom, habit and tradition is not swiftly demolished, even by revolution. Only with any increasing awareness in the individual Japanese citizen of his new stature and of his corresponding duty to follow the issues of the day and to exercise control over those who are chosen to serve him will political parties in Japan develop into effective instruments of democratic government.

Hope for the future lies in the further development of trends already manifest during the first 2½ years. The power of the electorate has been increased; its knowledge concerning political, social and economic problems and their inter-relationships has enlarged; its critical faculties toward political promises and statements have been sharpened, resulting in increasing popular demand for clarification of public issues. On the other hand, political parties and political leaders have displayed a growing awareness of their public responsibility and of their accountability to their constituencies. The way has been cleared and some progress already made toward democratic internal organization and practices by political parties. The most encouraging factor of all is the growing number of Japanese who are convinced of the need to democratize their institutions, who are growing in their understanding of the principles involved, and who are firmly determined to modernize Japan in the political sphere as swiftly as their fathers did in the industrial.

SECTION XII

Political Education

Introduction

Governmental and political reforms are inevitably bound up with the problem of political education. It is evident that a new Constitution and legislation required to implement it, however enlightened, will ultimately prove ineffectual unless broadly based on popular understanding and support.

An interview with a Japanese woman revealed that as a consequence of divorce she was dependent on meager public charity, although her former husband was well-to-do. She was unaware that the revised Civil Code granted her a share of community property [1] Yet even when she understood the new provisions of the Code, enacted to implement equality guarantees of the Constitution, she was reluctant to assert her rights in the face of family disapproval. To be effective, laws must be known and understood. It is also clear that popular attitudes concerning feudal social structures such as the family system must be altered if democracy is to take firm root in Japan

The Constitution clearly provides that the Emperor is a symbol of the people's unity, who is assigned ceremonial and routine functions such as that of attesting the appointment of designated public officials.[2] Yet some minority spokesmen have sought to interpret the attestation provision as an assignment of governmental authority to the Emperor On one occasion, for example, it was argued that the appointment of a State Minister was invalid until after attestation Others held that the attestation clause also assigned the Emperor responsibility for appointing or dismissing Prime Ministers, and consequently for creating governments.

Some reports indicate that persons wronged have been reluctant to seek legal redress They have failed to understand that the procurators and the police are the servants of the people, who have a solemn responsibility to safeguard and protect property and all the rights guaranteed the Japanese people under the Constitution.

Hundreds of law-abiding Japanese have been intimidated into paying large sums to blackmailing "goro" newspaper publishers to prevent publication of slanderous "news reports," and then have failed to file complaints with the procurators, because they did not know that they might seek legal redress through the courts. And occasionally, when called to account, these disreputable newspaper publishers have defended their actions on the ground of "freedom of speech and press "

[1] Appendix H. 38, Amendment to the Civil Code, Law No 222, December 22, 1947.

[2] Appendix C. 21, The Constitution of Japan

formation concerning such matters as the status of special investigations and prosecutions, the civil liberties guarantees of the Constitution, basic provisions of the Civil and Criminal Codes and the Procedural Codes.

During the summer of 1948 provision was made for the establishment of similar information offices in all prefectures. These agencies will perform only those functions specifically assigned by the prefectural governments. Operational regulations prohibit utilization of these offices to achieve political objectives.

Headquarters representatives have assisted government information agencies to utilize the most modern and effective information and education techniques

I. Basic Program Outline

In an effort to integrate the various phases of the political situation activities of Civil Information and Education Section and Government Section, GS early formulated a brief outline, subsequently elaborated by CI&E, which served from the beginning as the basis for all planning and operation by the two Sections Although no action was taken either to seek or grant formal concurrence to the program outline until the spring of 1948, by which time all phases had been tested and put into operation, it actually represents the basis for all political education activity by GS and CI&E. Formal action was delayed (GS concurred on April 12) to permit adequate testing of media and techniques and the completion of major phases of the government reorganization program As finally formulated, the program did not represent a rigid pattern of operation but rather a broad foundation on which a continuing program could be based.

Text of the coordinated program follows:

1. General Objectives

a. To help change the present cynical, and therefore, passive attitude toward government to one of more positive participation, and to awaken the people to the fact that it is their responsibility to maintain a government which they can trust.

b. To help develop in the Japanese people an acute awareness of their rights as well as their responsibilities under the new Constitution.

c To assist in eliminating age-old concepts of law and order as engendered by a totalitarian type of government

d To assist the Japanese people in recognizing the fallacies behind opportunistic promises and non-democratic ideologies and the benefits of living in a free, democratic state.

2. Specific Objectives

a To present the Constitution realistically, chapter by chapter, in its relations to the daily lives of the people

b To develop understanding of the practical operations and functions of the Japanese government at all levels.

c To give the people necessary information and help in developing an understanding of the objectives and responsibilities regarding the purge.

d To give the people necessary information regarding the organization and functions of political parties, and the influence of parties on legislation and in governmental affairs

e To expand the number of groups now participating in political education programs and provide the leadership of such groups with adequate information.

3. Procedures

a. Survey political organizations, both partisan and non-partisan, to determine the extent

to which they will lend themselves to participation in the program.

b. Hold individual conferences with political science scholars to ascertain their appraisal of the situation and enlist their active as well as critical support in the program.

c. Encourage development of the League for Political Education for Democracy (or its equivalent) along non-partisan, realistic, and democratic lines, and utilize their organization as a medium for disseminating political information.

d. Confer regularly with representatives of political, agricultural, labor, cultural, radio, magazine and press groups to discuss salient features of this political information-education program.

e. Organizations represented in the above mentioned meetings as well as organizations throughout the country, would be provided with necessary printed materials, displays, program outline, et cetera, so that they would develop their own political information-education programs.

(1) A pamphlet, "Committees and Programs for Democratic Organizations," containing chapters on the work of a "Political Study Committee," an "Education Committee," practical community projects, suggestions for visits to and reports on governmental bodies from the National Diet to local courts, was published by the Social Education Association. This is being distributed throughout the country in conjunction with appropriate lectures given by CI&E representatives in the field.

(2) A joint Labor Division-CI&E program, emphasizing the need for political understanding and pointing up the dangers of totalitarian concepts, is in process. In this connection, 175,000 copies of a pamphlet "Trade Unionism: Dangers of Totalitarian, Undemocratic Control," and 14,000 copies of a pamphlet, "Trade Union and Political Action," have been distributed to labor groups throughout the country.

(3) Implementation of the foregoing will be effected through guidance exercised by Military Government teams in the field under instructions from CI&E through necessary channels.

f. Public lectures on current legislation now being given throughout the country by Occupation personnel and/or Japanese leaders will be continued.

4. Themes

a. *National Government.* (1) *The Diet.* (a) Highest organ of state power and sole law-making body of the nation; no longer dependent upon or subordinate to the executive.

(b) Members are independent representatives of the people and not "rubber stamps" of the Ministers.

(c) Democratization of procedures in both houses; election of officials, free debate, standing committees, public hearings, public sessions.

(d) House of Representatives: veto power, election of the Prime Minister, responsibility for the budget, treaties.

(e) House of Councillors: now composed of popularly elected representatives, unlike democratic House of Peers; scope of its authority and functions.

(f) Relationship of Diet to executive and judicial branches of government.

(2) *The Cabinet.* (a) Method of election of Prime Minister and appointment of Ministers.

(b) Executive powers, limited legislative powers.

(c) Changed relationships to the Emperor.

(d) Relationship to local government.

(e) Relationship to the Diet and to the judiciary.

(3) *Judiciary.* (a) Significance of the reorganization of the court system.

(b) Method of appointment of Supreme Court justices and lower court judges.

(c) Popular review of all appointments to the Supreme Court.

(d) Supreme Court's rule-making power.

(e) Importance of the Supreme Court's power to review the constitutionality of all laws, regulations, or official acts.

(f) Relationship of judiciary to legislative and executive branches of government

b. *Local Self-Government.* (1) Changed status of governors, mayors, and headmen as popularly elected representatives.

(2) Relationship of prefectural government to municipalities, towns and villages.

(3) Relationship to national government

(4) Assemblymen's real legislative power, veto power, control over the budget

(5) Assembly committees—authority to hold public hearings and conduct investigations.

(6) People's power to recall elected representatives and to initiate legislation and the procedure for initiating such action.

c. *Rights and Duties of the People* (1) Rights and freedoms are guaranteed to the people and not, as under the old Constitution, promised "except as determined by law."

(2) The Code of Criminal Procedure specifies safeguards of the people's rights in the matter of arrest, or search and seizure, speedy trials, evidence permitted, et cetera, and defines the powers of judges, procurators and police.

(3) The Civil Code further defines and protects the rights of the people, the equality of individuals under the law, revisions of the family law, laws governing inheritance, divorce, et cetera.

d *The Purge.* The objective, basis and actual operation of the purge, implementing the statement in the Potsdam Declaration that "there must be eliminated for all time the authority and influence of those who have deceived and misled the people of Japan into embarking on world conquest . . ."

e. *Political Parties.* If the people are to use the ballot intelligently and never again submit to an Imperial Rule Assistance Association, they must understand·

(1) The basis of a sound political party.

(2) The importance and functions of political parties in representative government.

(3) The influence of parties on legislation and in governmental affairs.

(4) The objectives of the Political Parties Bill

5. Media Plans

a *Radio* (1) The objectives outlined in this program will be projected on national, regional, and local broadcast station levels with special appeals made to women's and youth groups

(a) Information pertaining to national affairs will be broadcast on national network programs

(b) Information regarding prefectural affairs will be broadcast on eight regional networks.

(c) Information concerning local political and governmental affairs will be broadcast by each of the 108 local stations.

(2) The accomplishment of these ends can be achieved through the use of the following forms of presentation:

(a) News programs.
(b) Commentary and editorial programs.
(c) Question and Answer programs.
(d) Audience participation programs
(e) Documentary dramatic treatment.
(f) Discussion programs.

(3) Political education information will continue to be included in the following radio programs.

(a) Good Morning Program.
(b) Radio Interviews
(c) Primary School Hour.
(d) The School Hour (for secondary schools).
(e) Man on the Street.
(f) The National Radio Forum.
(g) The Women's Hour.
(h) The Student's Hour.
(i) Good Neighbors (a serial drama program).
(j) Bell Hill (a serial drama program).
(k) Commentaries.
(l) Report to the Nation.

(m) The Farm Hour.
(n) The Labor Hour.
(o) The March of Time.
(p) The Family Hour.
(q) The Local Hour (local).
(r) The People's Radio School.
(s) The Diet Round Table.
(t) The Citizen's Hour (regional).

(4) The attention of listener groups, already formed, can be directed by CI&E to the problems treated in this program.

b. *Press.* (1) Weekly press conferences, scheduled each Friday for Government Section use in disseminating current and long-range information regarding political education, will be planned to cover the themes listed in section 4.

(2) Press and Publications Unit will continue, through conferences and press releases, to emphasize the functions and responsibilities of a free press in informing and educating the people regarding democratic government.

c. *Magazines.* One magazine conference each month will be reserved for Government Section spokesmen. The content of these conferences will be devoted to stressing general and specific objectives of the program.

d. *Exhibits.* (1) Appropriate agencies and ministries of the Japanese Government will be urged to prepare, with the assistance of CI&E Exhibits Unit, visual aid materials, such as posters, photographic exhibits and *kami shibai* (narratives illustrated by pictures), based on the following themes:

(a) An exhibit series, "Duties and Responsibilities of a Good Citizen" (example: the new Civil Code), will portray basic democratic practices and their relation to the average citizen's day-by-day fundamental problems.

(b) A series of poster charts on "What the Constitution Means to Me (the Individual)" will exploit through a different pictorial technique the material used in the charts on the Constitution created last spring.

(c) A *kami shibai* treatment of the subject "Democratic Trade Unionism" has been drafted.

(2) Military Government teams will be encouraged to reach new audiences with the exhibits already available to them:

(a) Land Reform.
(b) How to Organize and Operate an Agricultural Cooperative.
(c) Student Self-Government.
(d) Democratic Organizations.
(e) British General Elections.
(f) The Code of Criminal Procedure.
(g) Labor Relations Adjustment Law.
(h) Trade Union Law.
(i) Collective Bargaining.

e. *Drama.** (1) The Theater Officer will continue to guide and encourage playwrights and theatrical groups in using political and social themes and to suggest more constructive approaches in plays which now portray only defeatist attitudes toward present-day problems.

(2) A survey will be made of available, politically pertinent scripts which, with proper editing and suggestions, could be published and distributed. Publication costs will be discussed with the Japanese Social Education Section and distribution can be effected through Military Government teams and/or Social Education Bureaus in every prefecture.

(3) Japanese plays produced in the past will be screened for democratic themes. It will be suggested to theatrical groups, both professional and amateur, that such plays be revived.

(4) Democratic themes will be suggested to the Experimental Theater Groups, now being organized with the advice of CI&E, the objective of which is to employ new ideas both in production techniques and in dramatic content.

(5) Liaison will be maintained with newspaper-sponsored (*Yomiuri* and *Mainichi*) play contests, and democratic themes for such contests will be suggested.

f. *Moving Pictures.* (1) The Motion Picture Unit will hold conferences with film producers

*In Japan today there exist over two thousand amateur and professional theatrical troupes. The importance of the drama as a medium for reaching masses of people is evidenced by the fact that every village has several small groups which perform in every conceivable type of building.

to explain how features and documentaries can contain a certain amount of political education material and still be entertaining.

(2) The Motion Picture Unit will continue to encourage Japanese producers to make documentary films, and will suggest political education themes.

(3) Newsreels, including the monthly newsreel on Japanese women's activities, will include pertinent, timely materials concerning political affairs.

(4) Weekly screenings of Allied documentaries will continue, to determine their political education possibilities. Consideration will be given to writing appropriate explanatory lectures to accompany these films and to encourage post-showing discussion groups

(5) National distribution of 2,000 CI&E-controlled 16-mm projectors will be made to appropriate Japanese groups and organizations through effective channels for the projection of Allied and Japanese documentaries

g. *Libraries.* (1) In connection with bibliographies and book selection aids, the CI&E Library Officer will suggest to appropriate Japanese agencies the importance of

(a) Preparing a selective list of books and magazines in Japanese which further the objectives of this program

(b) Publication of this list in the Japanese Librarians' Journal, with the advice that it be considered as a guide for library purchases

(c) Endorsement of this publication by a prominent Japanese, preferably some champion of democracy.

(2) CI&E will enlist the aid of the Japanese Library Association in the publicizing informative literature on political affairs

(a) Bring up to date and post prominently the bibliography on government and politics prepared in August, 1947

(b) Prepare bulletin board and window displays featuring books, pamphlets, periodicals and documents relating to the objectives of this program.

h. *Organizations and Public Discussion Groups*

(1) *Mainichi Shimbun* has agreed to sponsor and conduct a series of biweekly public forums simultaneously in Tokyo and other cities where it maintains offices Representatives from the economic, labor, agricultural, press, political, cultural fields, et cetera, will participate in discussion of political subjects, and digests of subject matter under discussion will be published

(2) PTA, adult education, youth and other groups

(3) Biweekly meetings

(4) Democratic League for Political Education

(5) Labor unions

(6) Cultural groups

(7) Farm groups

(8) Professional societies

(9) Management organizations

(10) Women's groups

i. *Education* (1) There are many activities, both within the regular school program and outside it, which can be utilized in information programs Adult education projects, special courses in current events, materials for youth organizations and correspondence and extension courses can include topics and materials relating to political education

(2) Materials in the regular course of instruction of the public schools of Japan, however, are designed for a long term program of education for the youth of the country Among the many aims of the course of study is sufficient and sound instruction designed to educate for effective citizenship. The materials of instruction are developed as parts of an integrated program adjusted to the age of the students, the psychological characteristics of children and adolescents, and the requirements of school life. Consequently, the utilization of the regular school program is by indirection. Specific information programs, even though timely, cannot be utilized in any way that will interfere with the integrated program of the schools Materials used in the schools must meet the psychological and educational re-

quirements of effective instructional materials.

(3) Political education will receive major attention in the regular school program as part of the social studies courses. On both the elementary and secondary levels, the courses of study include much material on topics that constitute political education. Revisions of these courses of study will provide opportunities to introduce new materials and to improve present materials on the basis of the experience of teachers in the classroom. A course in current problems is provided in the curriculum of the upper secondary school.

(4) The Ministry of Education has already published "A Primer on the Constitution" and authorization has been given for the printing of more than six million copies. Distribution will include all seventh, eighth and ninth grade pupils, all teachers and leaders of various adult education activities. Shortage of paper is a determining factor in the completion of the printing of the present edition of this book. Extension of use of this book to other grades of the school system and to other educational projects will be possible when paper is available for further printing.

(5) The following adult education organizations and projects can be utilized as outlets of information programs on political education, provided paper for printing of information materials can be furnished the Ministry of Education for this purpose:

(a) Citizens' Public Halls.
(b) Parent-Teacher Associations.
(c) Youth Organizations.
(d) Workers' Education Programs.
(e) Visual Education Programs.
(f) Correspondence Courses.
(g) Community Education Classes.

(6) The information-education program for Japanese repatriates at various ports of debarkation will be continued.

6. Military Government

Implementation of this entire program will be coordinated with Eighth Army Military Government, in order to reach the "grassroots" levels.

II. Projects Undertaken in Cooperation With CI&E

The program undertaken with CI&E was so comprehensive it is impossible fully to report every phase. It is necessary, therefore, generally to review the record of the two sections' operations and to limit detailed discussion to a few projects, which illustrate the manner in which the program was developed.

Representative of these projects was the assistance accorded Japanese information media in emphasizing the importance of the elections of 1946 and 1947.

1. 1946 General Elections

Prior to the general elections of April 10, 1946 authorized agencies of the Headquarters encouraged the Japanese press, radio and other information dissemination media to encourage election participation by eligible voters and to inform the nation's people, especially the millions newly enfranchised, concerning important political issues.

The effectiveness of this publicity is attested to by the large vote cast on election day: more than 27,000,000 persons voted, representing 72.2 percent of the Nation's eligible electors.

In pre-election reports the press emphasized the election's importance and the imperative need for participation by all eligible voters. *Yomiuri-Hochi* declared that the world was watching the Japanese election and that those who refrained from voting were "enemies of

the people." *Tokyo Shimbun*, announcing that the election would "rehabilitate" the nation, considered it "the most important in (Japan's) history."

Asahi's constant refrain was this "The general election is our chance to develop the political wilderness of Japan We must not forget that the democratic organization of workers and their labors are the foundation of freedom." *Mainichi* cried that "Abstention from voting is a shame . . It is all right for us to criticize the government . . but at the same time we must endeavor to solve the situation by our own efforts The election is the first step toward acting for ourselves . The ideal is always remote and high but if we cannot have it right now, we must take the second or third best—anything will do as long as it is even a single step closer to that ideal "

Mainichi also attacked the occasionally expressed opinion that the Japanese people cannot act constructively as long as the country is occupied by foreign armies

"The fundamental mistake in this attitude is that the Japanese people are too anxious for the realization of their ideals in a short time, forgetting that they are taking nothing more than the first step for the reconstruction of their country We must understand that the nation can never be democratized unless we make strenuous efforts to that end for many years to come We should shoulder a heavy responsibility for the reconstruction of the country. In this sense we can accomplish our hope by supporting the candidates and political parties which are nearest our ideals "

The press alternately ranted and cajoled Candidates and parties were subjected to criticism, but simultaneously there was insistence that responsible citizens exercise their franchise. Reference to "precious vote" became a kind of recurrent theme

Government spokesmen too—on national, prefectural, city and town levels—issued numberless statements, most of them duly reported by the press, calling for active participation by all Japanese in the nation's political affairs

Space was also given to detailed discussion of the mechanics of the election procedures in an effort to inform the millions of newly enfranchised voters. The press generally gave adequate publicity to voting requirements and to the necessity for reporting omissions in voting lists.

During the weeks prior to the election considerable space was given to the campaign activities of the political parties and to individual candidates. Much of the newspaper comment was neutral or else strongly critical of the Shidehara Government and its policies, but again it represented publicity which inevitably served to stimulate the political interest of the nation's electorate

Care was exercised to effect an equitable allocation of radio time among the various political parties and candidates to assure that all would have the opportunity to express themselves through this medium during the officially designated period from March 14 through April 8

Time allotted to representatives of the eight leading parties (those having candidates in twelve or more prefectures) and to candidates in Tokyo, Chiba, Kanagawa, Gumma, Saitama, Tochigi, and Ibaraki prefectures, which are typical of the entire nation, is indicated in the following table:

Party	*Number of Minutes Broadcast Time (Local)*	*Number of Minutes Broadcast Time (National)*	*Total Broadcast Time (Minutes)*	*Percent of Total*
Progressive .	967	320	1,287	14 3
Constitutional Yosei	148	320	468	5 2
Liberal	1,006	335	1,341	15 0
Communist	286	320	606	6 7
Cooperative	29	325	354	3 9
Social Democrat	402	340	742	8 3
Reform.	29	280	309	3 4
New Japan	203	220	423	4 7
Minor parties Independents	3,468	None	3,468	38 5
Total minutes . ..		. .	8,998	100 0

No full report of attendance at public meetings was compiled, but a report of 2,215 meetings in the Tokyo area during the last three weeks of March indicated that Communists held fewer gatherings than other major parties but attracted somewhat larger audiences.

	Number of Meetings held	Total Audience	Average at each meeting
Progressives	307	16,619	54
Liberals	452	27,546	61
Social Democrats	382	30,469	80
Communists	108	19,266	178
Cooperatives	34	3,656	108
Minor parties and Independents	932	71,725	77

When the government on March 11 announced postponement of the general election from April 1 to 10, the press generally charged the Government with inefficiency but, at the same time, it was suggested that the extra time would make it possible for unknown candidates to make themselves better known to their constituents. However, the fact that most candidates were relatively unknown was not regarded as entirely disadvantageous. "Where 'name' was given every consideration," said *Mainichi*, "the tragedy of militaristic Japan was the only result. . . . We must take the influences now emerging and give them new value."

2. Elections of 1947

An intensive program of political education, designed to achieve the twin objectives of helping electors to cast their ballots intelligently and to stimulate participation by all eligible voters was launched in February 1947.

A series of sixteen press conferences was conducted during the period from mid-February to April 25. During the first month Government spokesmen discussed such subjects as the people's sovereignty, voting as a primary responsibility of the people, the people's responsibility for good government, the imperative need for an informed electorate and for independent voting, and essential qualifications of candidates for elective office. Later, immediately prior to the various elections, headquarters officials spoke concerning the duties and responsibilities of prefectural and local government executives and assemblymen, functions of the House of Representatives and of the House of Councillors. Voting techniques were also discussed.

A supplemental conference series helped to explain the objectives and the methods of the purge program, which was directly related to preparations for the elections.

Despite the severe paper shortage the press devoted extensive space to these conferences and also commented frequently and with considerable discernment on the subjects and principles under discussion.

Similar press conferences, many of them informal, were conducted by military government units throughout the country as part of an over-all program to stimulate intelligent voting. Military Government also used the newspapers to publish "open letters" and day to day notices, all designed to encourage serious and thoughtful consideration of election issues.

Typical of these were the following statements, issued prior to the elections by the commanding officer of the Saitama Military Government Team:

SAITAMA MILITARY GOVERNMENT TEAM
APO 201

Subject: Democratic Elections.

To: The People of Saitama.

1. In recent elections during which Land Reform Commissions were elected in the Machi and Mura of Saitama, it was disappointing to find that in the great majority of cases, no elections were held because agreement had been reached by the various groups before the elections were ever held.

2. One explanation of this phenomenon is a well known characteristic of the Japanese people, that of "Saving Face." It is reported that individuals do not want to be known as unsuccessful candidates and will not run for an election unless assured of success in the election.

3. This "Face Saving" has no place in a democratic election. For one thing, each election is a school in which potential politicians learn their lessons. If there are no schools, there are no lessons. Another objection is the fact that unless the people at large elect their candidates, they cannot hold those candidates responsible for their post-election activities.

4. It was recently brought to my attention that in one of the major cities of the prefecture all the political parties were trying to agree on a single candidate before the election. This is foolish. The place for the selection of an executive to be made is at the polls by the people at large, not by a small group of persons who take

Furthermore what training does such an election give to the going and promising men in these political parties for future political struggles? Certainly no democratic electorates will want to give their rights away so carelessly

5 The government of a democratic nation is for, by and of the people. The voters have no right to delegate their power of selection to any small group If they do this, they are failing to meet their obligations and deserve what may befall them, non-representative government. Let every man and woman who has the vote, exercise that right and make the coming election a truly democratic one

TIMOTHY J RYAN,
Lt Col , Infantry, Commanding

Subject Election Law Violations

To The People of Saitama Prefecture

1. It is essential that in the coming elections every voter make himself responsible for seeing that the election is conducted in a free and fair manner

their duty is to insure that violators of the election laws are punished They can only do this if they have the cooperation of all citizens

3. The following is a list of common election law violations which unscrupulous candidates may be expected to commit Be alert for any of these violations and report them to your election administration committees

a Privileges granted to favored candidates

cash

e. Excessive campaign expenditures, in cash or in kind, or failure to report campaign expenses Excessive contributions by individuals

f Denials of rightful candidacies, improper candidacies

g Dishonest tabulation or reporting of results

h Failure of authorities to prosecute violators

to military government It is particularly important when reporting election law violations that you give the complete facts regarding the violation, the time,

people

TIMOTHY J RYAN,
Lt Col , Infantry, Commanding

In every case, however, SCAP and military government teams were concerned with impressing electors with the importance of their responsibilities as citizens Every care was taken to maintain strict neutrality concerning election issues or political personalities

a One of the SCAP press conferences was filmed by a major movie producer The resulting 20-minute films, which emphasized the responsibility of citizens to participate in all the elections, were shown in most movie theaters throughout the country immediately prior to the elections

b SCAP also gave assistance to the Broadcasting Corporation of Japan in developing a series of daily radio programs, likewise designed to educate voters and to stimulate widespread participation in the elections

These general educational programs were designed to reach listeners of all interest groups· farmers, fishermen, women, shut-ins and hospital patients, repatriates, the newly-enfranchised, rank-and-file voters.

Speakers included the Prime Minister, the President of the House of Peers, the Speaker of the House of Representatives, labor leaders, representatives of farm unions, of the Fishermen's Association, Japan Red Cross, YWCA, political leaders, prominent women, the Procurator General, professors and cabinet ministers.

In the case of radio, too, a special attempt was made to explain the purposes and the methods of the purge, to emphasize that the way was being prepared for the emergence of new leadership truly representative of the people's will.

c. GHQ also published a Political Affairs Bulletin, for distribution twice monthly to military government units in the field, in which

	Number of Meetings held	Total Audience	Average at each meeting
Progressives......... ..	307	16,619	54
Liberals........... ..	452	27,546	61
Social Democrats	382	30,469	80
Communists...	108	19,266	178
Cooperatives. .	34	3,656	108
Minor parties and Independents........	932	71,725	77

When the government on March 11 announced postponement of the general election from April 1 to 10, the press generally charged the Government with inefficiency but, at the same time, it was suggested that the extra time would make it possible for unknown candidates to make themselves better known to their constituents. However, the fact that most candidates were relatively unknown was not regarded as entirely disadvantageous. "Where 'name' was given every consideration," said *Mainichi*, "the tragedy of militaristic Japan was the only result. . . . We must take the influences now emerging and give them new value."

2. Elections of 1947

An intensive program of political education, designed to achieve the twin objectives of helping electors to cast their ballots intelligently and to stimulate participation by all eligible voters was launched in February 1947.

A series of sixteen press conferences was conducted during the period from mid-February to April 25. During the first month Government spokesmen discussed such subjects as the people's sovereignty, voting as a primary responsibility of the people, the people's responsibility for good government, the imperative need for an informed electorate and for independent voting, and essential qualifications of candidates for elective office. Later, immediately prior to the various elections, headquarters officials spoke concerning the duties and responsibilities of prefectural and local government executives and assemblymen, functions of the House of Representatives and of the House of Councillors. Voting techniques were also discussed.

A supplemental conference series helped to explain the objectives and the methods of the purge program, which was directly related to preparations for the elections.

Despite the severe paper shortage the press devoted extensive space to these conferences and also commented frequently and with considerable discernment on the subjects and principles under discussion.

Similar press conferences, many of them informal, were conducted by military government units throughout the country as part of an over-all program to stimulate intelligent voting. Military Government also used the newspapers to publish "open letters" and day to day notices, all designed to encourage serious and thoughtful consideration of election issues.

Typical of these were the following statements, issued prior to the elections by the commanding officer of the Saitama Military Government Team:

SAITAMA MILITARY GOVERNMENT TEAM
APO 201

Subject: Democratic Elections.

To: The People of Saitama.

1. In recent elections during which Land Reform Commissions were elected in the Machi and Mura of Saitama, it was disappointing to find that in the great majority of cases, no elections were held because agreement had been reached by the various groups before the elections were ever held.

2. One explanation of this phenomenon is a well known characteristic of the Japanese people, that of "Saving Face." It is reported that individuals do not want to be known as unsuccessful candidates and will not run for an election unless assured of success in the election.

3. This "Face Saving" has no place in a democratic election. For one thing, each election is a school in which potential politicians learn their lessons. If there are no schools, there are no lessons. Another objection is the fact that unless the people at large elect their candidates, they cannot hold those candidates responsible for their post-election activities.

4. It was recently brought to my attention that in one of the major cities of the prefecture all the political parties were trying to agree on a single candidate before the election. This is foolish. The place for the selection of an executive to be made is at the polls by the people at large, not by a small group of persons who take

the going and promising men in these political parties for future political struggles? Certainly no democratic electorates will want to give their rights away so carelessly

ment Let every man and woman who has the vote, exercise that right and make the coming election a truly democratic one

TIMOTHY J RYAN,
Lt Col , Infantry, Commanding

Subject: Election Law Violations

To The People of Saitama Prefecture

1 It is essential that in the coming elections every voter make himself responsible for seeing that the election is conducted in a free and fair manner

their duty is to insure that violators of the election laws are punished They can only do this if they have the cooperation of all citizens

3 The following is a list of common election law violations which unscrupulous candidates may be expected to commit Be alert for any of these violations and report them to your election administration committees

chines to buy votes by bribes of scarce commodities or cash

e. Excessive campaign expenditures, in cash or in kind, or failure to report campaign expenses Excessive contributions by individuals

f Denials of rightful candidacies, improper candi-

to military government It is particularly important when reporting election law violations that you give the complete facts regarding the violation, the time, place, persons involved, money involved, etc , and that you be willing to sign your name to your report It is your duty, if it becomes necessary, to act as a witness against those who are attempting to prevent the election from being a free and fair expression of the will of the people

TIMOTHY J RYAN,
Lt Col , Infantry, Commanding

In every case, however, SCAP and military government teams were concerned with impressing electors with the importance of their responsibilities as citizens Every care was taken to maintain strict neutrality concerning election issues or political personalities

a One of the SCAP press conferences was filmed by a major movie producer The resulting 20-minute films, which emphasized the responsibility of citizens to participate in all the elections, were shown in most movie theaters throughout the country immediately prior to the elections

b SCAP also gave assistance to the Broadcasting Corporation of Japan in developing a

These general educational programs were designed to reach listeners of all interest groups: farmers, fishermen, women, shut-ins and hospital patients, repatriates, the newly-enfranchised, rank-and-file voters

Speakers included the Prime Minister, the President of the House of Peers, the Speaker of the House of Representatives, labor leaders, representatives of farm unions, of the Fishermen's Association, Japan Red Cross, YWCA, political leaders, prominent women, the Procurator General, professors and cabinet ministers.

In the case of radio, too, a special attempt was made to explain the purposes and the methods of the purge, to emphasize that the way was being prepared for the emergence of new leadership truly representative of the people's will.

c GHQ also published a *Political Affairs Bulletin*, for distribution twice monthly to military government units in the field, in which

major attention was given to the elections. The Bulletin's purpose was dual, to inform military government personnel and to serve as the basis for local education programs. Most Bulletin material was furnished in both English and Japanese, so that it might be made immediately available to local newspapers, radio stations, schools, or community groups by the military government teams. Reports from the field indicate that most of the material was widely and effectively disseminated.

Military government teams also conducted preelection meetings during which representatives of women's clubs and civic groups were urged to devote their energies to getting out the votes of such electors as had indicated only slight interest in their duties as citizens.

Arrangements were made for public gatherings during which Election Administration Committees explained election procedures.

Public meetings were also scheduled to afford candidates—of all political persuasions—an opportunity to discuss election issues. Care was taken to avoid any suggestion of favoritism by military government.

Military government units also made use of hundreds of civil information and education bulletin boards throughout the country to post public notices concerning the elections. In many instances loudspeakers at railway stations were used to urge the people to cast their votes.

c. Japanese Publicity. The Japanese radio, motion pictures, Government agencies, and press gave the April elections more intensive publicity than had been accorded any previous election in Japan's history.

(1) Radio. The Broadcasting Corporation of Japan made radio time available to all candidates participating in the April elections. SCAP advised BCJ concerning program scheduling, but the basic time allocation formula was recommended by the Inter-party Negotiating Conference of the House of Representatives. An objective decision was required since BCJ, as a nonprofit public service corporation, was committed to a policy of complete neutrality and nonpreference. No time was available for sale to political parties or individuals.

All candidates for posts as prefectural governors, whether independents or party candidates, were given opportunity to broadcast three times to their respective constituencies. The time available in each prefecture varied slightly, depending on the number running for election, but all candidates for the same post were accorded equal broadcast privileges. Each candidate used an average of about 30 minutes of broadcast time.

Radio time was also assigned to candidates running for office as mayors of cities of 100,000 or more population. The limited time available made it impossible to expand this service to include mayoralty candidates of all cities.

The provision of the election law requiring that a candidate for executive position must receive a minimum of three-eighths of the total vote cast necessitated a number of run-off elections on April 15. All gubernatorial candidates and all large city mayoralty candidates in these elections were granted 25 minutes of supplementary broadcast time.

Each candidate for the national constituency of the House of Councillors was allowed time for two broadcasts over a nation-wide station network. Equal time, on a prefectural basis, was allotted to prefectural district candidates.

Similar time allocations were made in behalf of all candidates for the House of Representatives. Since, however, election districts were relatively small these broadcasts were directed only to the respective constituencies of the various candidates.

Additional time, however, was allotted to political parties on a national basis. During the period prior to the Diet elections each of the five parties (Liberal, Democratic, Social Democratic, People's Cooperative, and Communist) utilized seven 15-minute periods for presentation and discussion of party platforms. This arrangement was made specifically in compliance with the recommendation of the Negotiating Conference.

The enormous number of candidates for local and prefectural assemblies precluded the possibility of making broadcast time available to all. However, most prefectural assembly candidates and those running as large city assembly representatives (100,000 population or over) were each granted time for a single 5-minute broadcast. (Not all took advantage of the opportunity, but the time was set aside for them) In the few cities or prefectures in which time limitations made such allocations impossible (Tokyo's JOAK, for example, serves five prefectures which had hundreds of candidates) it was necessary to resort to a mere listing of candidates with brief biographical information concerning each.

In addition to these political broadcasts by candidates BCJ sponsored a number of general education broadcasts such as a series to acquaint voters with voting procedures, based on material provided by the Home Ministry

Throughout the election period broadcasters also presented a daily average of seven brief announcements reminding voters of their duty to go to the polls each election day, and the imperative need for responsible and intelligent voting.

BCJ also broadcast a number of daily announcements warning voters to guard against possible fraud or illegal attempts to influence elections that might be perpetrated by such agencies as the *Tonari Gumi*, which had been stripped of all bureaucratic authority

In the huge task of developing and scheduling these election radio programs Military Government personnel throughout the country gave all possible assistance whenever required by BCJ. In particular, care was taken to ensure that no preferential treatment, whether by mistake or oversight, was accorded any individual or political group.

BCJ earned special commendation for its high sense of public responsibility when, immediately following the elections, it rejected a proposed Diet appropriation of ¥8,000,000, offered in payment for radio time devoted to election broadcasts, on the ground that it was merely fulfilling its obligations to owners of radio receivers, who by payment of annual license fees, subsidize an independent agency devoted to public service By its action BCJ established the principle of its direct responsibility to the Japanese people free of Government direction or political influence.

(2) *Motion Pictures*. Newsreel companies released a number of films in which attention was given to general election coverage and to the campaigning of prominent candidates Of special interest was a movie made of a "man-of-the-street" broadcast, during which the then State Minister Tokujiro Kanamori addressed a street gathering to explain the purge program as an essential preliminary to the emergence of new political leadership This film was noteworthy since it depicted, for the first time in Japan's history, a cabinet minister discussing Government policies directly with the people

From March 15 to April 30, a total of 1,537,510 feet of film was distributed to theaters as newsreels of which a total of 532,917 feet covered subjects of elections and the purge. In other words, during this period, approximately one-third of the newsreel footage was devoted to election topics.

The Nippon Motion Picture Co produced a two-reel documentary film on elections entitled "For Whom Would You Cast Your Vote?" This picture was acclaimed by the political parties and was exhibited by many local organizations as well as in regular commercial chain and independent theaters. It is estimated to have been seen by a total audience of 2 million persons

The four major motion picture companies placed "top titles" (motion picture titles preceding the main title picture) on every Japanese picture, whether old or new, to be released after March 15 until April 30 These top titles read as follows:

"It is the privilege and duty of every citizen in a democratic nation to vote."

"Study your candidates and their platforms, and vote without fail."

"Election dates are: April 5—for Governors, Mayors and Headmen; April 20—for House of Councillors; April 25—for House of Representatives; April 30—for Assemblymen. Vote without fail!"

Comprehensive surveys undertaken by the motion picture industry indicate that the election titles and the newsreels were seen by approximately 30,000,000 persons.

(3) *Government Agencies*. The Home Ministry prepared a series of posters graphically emphasizing the voter's responsibility for independent and intelligent participation in the elections. Eight hundred thousand of these posters were placed in railroad stations, in public buildings and on community bulletin boards throughout the country. In addition, the Ministry issued a series of press releases timed to precede each of the elections, containing detailed information relating to election procedures and administration, with a special effort made to indicate to voters where they might have access to detailed information on all candidates.

Bulletin boards also carried listings of all persons affected by the purge and therefore ineligible to hold public office. This means of acquainting the people of Japan concerning the scope of the purge program served also to point up the duty of the electorate to select responsible leadership, worthy and qualified to participate in the re-creation of Japan as a democratic nation.

To reduce abstention election administrative officials placed signboards on public conveyances urging voters to go to the polls. In many communities sirens and bells were rung at specified intervals to attract voters. Extensive use was also made of loudspeakers in railroad stations, at street intersections, and on trucks.

3. Press

The Japanese press devoted extraordinary attention to the four elections; for a period of 2 months the elections constituted the number one news story in Japan's press.

Not only did the entire Tokyo press, followed by many prefectural papers, stress the importance and the revolutionary nature of the April balloting, but on the eve of every election the press unanimously insisted upon the essential need for every Japanese citizen to cast his free and independent ballot.

When it seemed likely that popular interest in the House of Councillors might be less than the interest in the House of Representatives, the press called for special efforts to be made to vote for candidates who would properly represent the voters.

This attention was, at times, expressed at the sacrifice of what might otherwise have been regarded as pressing news, and in spite of the great shortage of newsprint.

During the last week of February, for instance, the prefectural press, far in advance of election day or even of the formal opening of the campaign, stressed the regional elections as Japan's first opportunity to establish local self-government.

Later, during the last 10 days of March, the presentation of the new election law, with the consequent filibuster of the Socialists in the Diet, and the dramatic incidents of the closing of the Diet sessions, offered topics that attracted widespread editorial and news attention with the press continuing in its limited space, to emphasize the importance of the elections.

Comparisons with past periods of Japanese political history were unavoidable. One of the notable editorials on this subject appeared in *ASAHI* on March 1 which pointed out that in the past, because of inadequate local autonomy, Japanese democratic tendencies, whenever allowed to exist by militarist authorities, had been merely nominal and that, in consequence, the people had never enjoyed an opportunity to display even rudimentary political aptitude.

The paper proceeded to point out that, under

SCAP guidance, Japan had achieved complete freedom to choose its officials and to conduct open, fair and honest elections

SHIN HOCHI, on the same day, asserted that the results of the elections would virtually determine the fundamental character of future Japanese democracy

This was a popular appeal. Japanese papers, as a whole, were fully conscious of the epoch-making nature of the elections in which voters were to participate Some, like *WAKAYAMA SHIMBUN* (February 23), and *NANSHIN NICHI NICHI* (March 1), saw an opportunity for Japan to demonstrate its entire freedom from ancient feudalistic concepts Others, as for instance, *NAGASAKI MINYU* (March 26), hailed the opportunity to convert government officials, hitherto appointed, into public servants chosen by and responsible to the people *YAMAGATA SHIMBUN* (March 10) went so far as to say that the elections would have "a historical significance greater than that of the Meiji Restoration," while *YOMIURI* (March 19) said "The April elections will decide the fate of our country "

Every major Tokyo newspaper devoted extensive space prior to each election to urge citizens to vote

Often these appeals were based upon the plea that all the world was watching the progress of democracy in Japan According to *HOKKOKU SHIMBUN* (March 3), failure to take part in a democratic election would shame Japan. *OITA GODO SHIMBUN* (March 23) added the argument, later taken up by many other papers, that "An early peace conference depends upon Japan's quick rebirth as a democratic nation as evidenced by the creation of an ideal administration in the coming balloting." *OKAYAMA GODO SHIMBUN* and *SHIMANE SHIMBUN* (both March 2), described the elections as cornerstones in Japan's peaceful revolution

Newspapers devoted much space to the problem of the absentee vote. During the totalitarian regime, great stress had been placed upon the participation of each citizen in the balloting process, since by this means a supposed popular support might be alleged for the militaristic and ultranationalistic factions. Under a system of free voting, some newspapers feared, voters might refrain from visiting the polls

The press showed great concern about the possibility that, due to the multiplicity of elections, the need for tending farms or for working in the office or factory, or for any other cause, some voters might neglect their civic privileges

Many reasons were given why abstention might occur

Early in the campaign some journals, notably *IBARAGI SHIMBUN* (February 2), *HYUGU NICHI NICHI*, *SHIKOKU SHIMBUN* and *SHIN IWATE* (all February 24) warned that holding all the elections in a single month might result in progressive loss of interest This argument was not repeated later and, in point of fact, proved unimportant when actual results showed that the last election in the series brought out a bigger vote than any other

Two small papers, *HOKKAI NICHI NICHI* (May 25), and *JIMMIN* (April 9 and 11), advanced arguments peculiar to themselves The former alleged that Japanese lacked zeal for democratic reconstruction – a statement countered by the unanimous testimony of other journals—while the latter termed abstention "a kind of revolt against democracy "

More realistic reasons were advanced by editorial writers A paper shortage that restricted the issuance of election bulletins seemed important to *NAGASAKI NICHI NICHI* (April 25), to *GIFU TIMES* and *OSAKA SHIMBUN* (both April 23), to *ASAHI* (April 10) and to numerous other journals. This made it difficult for voters to obtain information concerning candidates and issues, *JIJI SHIMPO* (April 10) said.

Preoccupation with food problems was mentioned by *JIJI SHIMPO* (April 10), by *WAKAYAMA SHIMBUN* (March 27) and by *SHIN*

EHIME (March 26) as contributing factors, a statement that many other papers echoed both before and after election.

A notable feature of the press treatment of the campaign was the constant reiteration, beginning with *DAI ICHI SHIMBUN's* editorial of March 4, that voters should cast their ballots for parties rather than for individual candidates. This advice had its origin in the presence of a large proportion of minor party men and of Independents in the 1946 Diet and was intended to develop a feeling of responsibility among political parties themselves for the activities of their members holding office.

Among the newspapers joining this movement were *NAGOYA TIMES* (March 22 and 26), *YUKAN KYOTO* and *HOKKOKU MAINICHI* (both March 22), *NAGASAKI MINYU* (April 1), *HOKKAI TIMES*, *OITA GODO SHIMBUN* and *TOO NIPPO* (all April 2).

JIJI SHIMPO (April 29) dissented from the chorus by urging voters in prefectural and municipal assembly elections to choose candidates of ability and character rather than party men.

The acute shortage of newsprint made it impossible for newspapers to do more than a bare minimum to inform electors of the records of candidates for various offices. Many newspapers, however, did list the names of candidates, with brief biographical data, prior to each election.

4. Press Conferences

The Government Section, beginning on February 26, 1947 sponsored a comprehensive program in the sphere of political education by means of a series of integrated weekly press conferences. This program, carried out in cooperation with the Civil Information and Education Section, was designed to present in basic, elementary terms the contemporary political and institutional changes occurring in the governmental structure of Japan as affecting the everyday lives of the common Japanese people.

In a much wider sense, the objective of this program was to enlighten the Japanese by means of a series of free and open discussions on the part of qualified spokesmen and through the medium of responsible organs of public information on immediate problems relating to the organization and functioning of the Japanese Government and the various legislative reforms and revisions that have been effected under the new Constitution.

In both scope and design, these press conferences served as an effective campaigning for enlightment on democratic government. Through the press and other media of public information the voice of these spokesmen has found echo among the millions of people in Japan's cities and countryside.

Within the limits of a year—from February 26, 1947 to February 27, 1948—Government Section representatives conducted fifty press conferences, reviewing and discussing the multitudinous problems connected with the over-all administration of government. During this period, basic principles involved in constitutional procedures and the elements of a democratic political society were renewed.

Such basic and fundamental discussions were covered as problems relating to national and local government; national and local elections; national and local finances; the National Diet, the executive, the judiciary; the purge, fundamental legislative revisions such as reforms of the criminal and penal code and the code of civil procedure, and the functions of the newly established Attorney General's Office were fully explored; pertinent and general topics were analyzed, such as the Constitution of Japan, the individual and the Constitution, legal authority under the Constitution, Government and the people, civil liberties, Government and the public welfare, the responsibility of the press for good government, democracy and the criminal process, the abolition of the *Tonari Gumi* system, the rule of the people, etc.

At least six discussions were held on specific topics concerning problems of local government and analyses of amendments to the local

autonomy law; three sessions were devoted to a review of the purge program; four sessions to problems of modern democracy.

The series of three discussions devoted to the subject of "The Function of Political Parties in a Free Society," is to be singled out for aptness and pertinency, as well as for frankness in the treatment of subject matter.

In all cases, the entire series of press conferences was marked by sound analysis and sober presentation Section spokesmen, moreover, were unanimous in their efforts to expose dishonesty and ineptness in government or public life.

The basis of these press conferences was derived from the concept that transmission of necessary information to the people of Japan is the moral, if not the technical, responsibility of the press and other information media The people can cooperate effectively only if they possess the necessary facts

Conversely, the lack of information, or a condition of misinformation, can seriously retard or hamper the achievement of reforms which the people desire and toward which the Government is working

The editors, publishers, and reporters of some forty-odd Japanese newspapers ordinarily attended the Government Section's press conferences. The papers included the metropolitan "Big Five" of Japan's journalism—*YOMIURI, MAINICHI, JIJI SHIMPO, NIHON KEIZAI* and *ASAHI*—as well as representative prefectural papers. Representation also included members of the staff of the news services, *KYODO, JIJI, RADIOPRESS, NIPPON NEWS, SUN PHOTO TIMES*, etc.

Correspondents and representatives of the Allied and foreign press in Japan also attended.

There was no requirement imposed on any member of the Japanese press to attend these conferences. They attended voluntarily. No restriction of any sort was imposed on any segment of the press, nor was any restriction placed on what any reporter should write in comment on each discussion session.

Some newspapers sent from two to six reporters each, depending on the nature of the conference, which was announced by the Press and Publications Office of CI&E, at least one day before the conference.

There was only one injunction made—an injunction often reiterated by practically every speaker in the series, thus serving as a leitmotif of the entire program Each member of the press attending the discussions was urged to make his utmost effort to inform every responsible citizen in Japan of his responsibility to acquaint himself with the features of the revolutionary changes in process in Japan, with the procedures of democratic government and of the manner in which he could most effectively serve and assist his government

This series of discussions was of tremendous importance for the immediate as well as the future of a democratic Japan as it opened new vistas in modern Japanese political and governmental life The impact of the effectuation of the new Constitution was immediate.

Never before had Japan faced such problems The Meiji pioneers during the Restoration period did not face the fundamental changes which the Japanese witnessed under the Occupation and, as one spokesman pointed out, that Restoration did not involve the vital participation of millions of citizens as is the case today

It is important to point out that the conferences were not held in a vacuum The discussions reveal that there was free exchange of opinion on the part of the speakers and the participants Those who attended engaged in lively and informal discussion of the ramifications of relevant problems Pertinent questions were asked in an effort to determine how best to effect required changes or modifications of the contemporary political and social soil of Japan.

This interchange of free and open discussion on public issues, conducted in an informal atmosphere, was novel in Japan, where the press traditionally had been rigidly controlled and

EHIME (March 26) as contributing factors, a statement that many other papers echoed both before and after election.

A notable feature of the press treatment of the campaign was the constant reiteration, beginning with *DAI ICHI SHIMBUN's* editorial of March 4, that voters should cast their ballots for parties rather than for individual candidates. This advice had its origin in the presence of a large proportion of minor party men and of Independents in the 1946 Diet and was intended to develop a feeling of responsibility among political parties themselves for the activities of their members holding office.

Among the newspapers joining this movement were *NAGOYA TIMES* (March 22 and 26), *YUKAN KYOTO* and *HOKKOKU MAINICHI* (both March 22), *NAGASAKI MINYU* (April 1), *HOKKAI TIMES*, *OITA GODO SHIMBUN* and *TOO NIPPO* (all April 2).

JIJI SHIMPO (April 29) dissented from the chorus by urging voters in prefectural and municipal assembly elections to choose candidates of ability and character rather than party men.

The acute shortage of newsprint made it impossible for newspapers to do more than a bare minimum to inform electors of the records of candidates for various offices. Many newspapers, however, did list the names of candidates, with brief biographical data, prior to each election.

4. Press Conferences

The Government Section, beginning on February 26, 1947 sponsored a comprehensive program in the sphere of political education by means of a series of integrated weekly press conferences. This program, carried out in cooperation with the Civil Information and Education Section, was designed to present in basic, elementary terms the contemporary political and institutional changes occurring in the governmental structure of Japan as affecting the everyday lives of the common Japanese people.

In a much wider sense, the objective of this program was to enlighten the Japanese by means of a series of free and open discussions on the part of qualified spokesmen and through the medium of responsible organs of public information on immediate problems relating to the organization and functioning of the Japanese Government and the various legislative reforms and revisions that have been effected under the new Constitution.

In both scope and design, these press conferences served as an effective campaigning for enlightment on democratic government. Through the press and other media of public information the voice of these spokesmen has found echo among the millions of people in Japan's cities and countryside.

Within the limits of a year—from February 26, 1947 to February 27, 1948—Government Section representatives conducted fifty press conferences, reviewing and discussing the multitudinous problems connected with the over-all administration of government. During this period, basic principles involved in constitutional procedures and the elements of a democratic political society were renewed.

Such basic and fundamental discussions were covered as problems relating to national and local government; national and local elections; national and local finances; the National Diet, the executive, the judiciary; the purge, fundamental legislative revisions such as reforms of the criminal and penal code and the code of civil procedure, and the functions of the newly established Attorney General's Office were fully explored; pertinent and general topics were analyzed, such as the Constitution of Japan, the individual and the Constitution, legal authority under the Constitution, Government and the people, civil liberties, Government and the public welfare, the responsibility of the press for good government, democracy and the criminal process, the abolition of the *Tonari Gumi* system, the rule of the people, etc.

At least six discussions were held on specific topics concerning problems of local government and analyses of amendments to the local

...s of public ... Program
these editorial ... Program
...ailing sentiment ... Procedure
...ese press conferen... Under the New Constitution .
...shed toward instru... Purge .
the instruments ... Curtain
... acquired rights ...
...nd of the means ... Local Autonomy Law
against possib... Media
...tacks and enc... Code, The
...gatiies ... Autonomy General s Officer
...ntemporary ... Local Autonomy Law
...s, the press ... nal Code II, The
...bility of ... nal Code, III, The

...vernment ... cal Parties in A Free Society, ...
...ry 27, 19... I
...acy, II

	July ...
Cecil G Tilton	Aug 8, 1947
Cecil G Tilton	Aug 15, 1947
Jack P Napier	Aug 19, 1947
Howard Meyers	Sep 5, 1947
A Rodney Hussey	Sep 12, 1947
Jack P Napier	Sep 19, 1947
Chas L Kades	Oct 3, 1947
Cecil G Tilton	Oct 10, 1947
Cecil G Tilton	Oct 19, 1947
Cecil G Tilton	Oct 24, 1947
Jack P Napier	Nov 7, 1947
Daniel C Imboden and Osborne Hauge	Dec 5, 1947
Alfred C Oppler	Dec 12, 1947
Alfred C Oppler	Dec 19, 1947
Cecil G Tilton	Dec 26, 1947
Howard Meyers	Jan 6, 1948
Howard Meyers	Jan 9, 1948
Cecil G Tilton	Jan 12, 1948
A Rodney Hussey	Jan 16, 1948
Guy J Swope	Jan 23, 1948
Guy J Swope	Jan 30, 1948
Guy J Swope	Feb 13, 1948
A Rodney Hussey	Feb 24, 1948
Guy J Swope	Feb 27, 1948
A Rodney Hussey	

...Tilton

...of Supplementary Materials ...plication

...ition to the subjects covered by press ...ces, Government Section made avail- ... CI&E materials relating to current ...ms or achievements of the government ... were made available through CI&E ...ls to the Japanese press In general, re- ...f this material did not conform to any ...l program pattern, instead, subject and ... were for the most part determined by ...ment action or news developments For ... been ... y a ... on ... by Section spokesmen On other occa- ... Section comments were elicited by con- ...ive government action, by significant action of the Diet, the courts, Japanese officials, etc In all cases these press reports concerned matters of real interest and consequence to the people of Japan and were intended to keep them informed concerning the proper and effective operation of government Publicity was also given to occasional communications from the Headquarters to the Japanese Government Whenever advice was given the Japanese Government, it was considered important also to inform the Japanese people, since in a democratic state the people are ultimately responsible for the effective operation of government

Prior to the reorganization of the Japanese police system, for example, assistance was given in according widespread publicity to the Supreme Commander's letter to the Prime Minister outlining principles to be observed

in the reformation of the police system and suggesting also the reorganization of the Justice Ministry, to create an agency more responsive to the will of the people. It was considered imperative that the people of Japan be completely informed concerning the real character of the feudal, autocratic police system which for decades had helped to keep the people in bondage. It was considered imperative that they understand the purpose of the reform and that they fully understand their direct responsibility for the proper and effective functioning of police in a democratic state.

Similar press releases were issued to explain the reorganization of the Central Liaison Office, the elimination of the old Bureau of Legislation and the transfer of its functions to the new Attorney General's Office, the elimination of the vicious Shokutaku system, etc.

Following is an example of the type of news story prepared and released by CI&E to all the Japanese press on the basis of materials or comments made available by Government Section:

"Abolition of the long-standing Japanese practice called '*shokutaku*' by a Cabinet ordinance issued today was commended by SCAP's Government Section.

"Under the '*shokutaku*' system, full-time employees of private business firms hold posts as advisers in various government departments.

"'These were no yen-a-year men,' a Government Section official said, 'They were usually paid salaries from government-appropriated funds in addition to receiving their main remuneration from their private employers.'

"'As such,' the spokesman explained, 'the *shokutaku* were serving two masters—public and private—and were paid by both.'

"The ordinance dismisses 706 of these advisers immediately and a large portion of another 10,000 will be dismissed by April 1, 1948, the official said. A small number, such as consultants, clerical and technical assistants whose services are especially required, will be retained as temporary government employees. However, the SCAP officer added, their appointments will be formalized in writing and their duties, responsibilities and the scope of their authority clearly defined.

"On the surface, the official explained, the '*shokutaku*' system was devised so that the government might have the advice of experts in fields such as commerce, banking, foreign affairs, industry, etc. It rapidly deteriorated in practice, he added, until it was but a part of the overall system whereby private monopoly interests were furthered at the expense of the public purse and the people's interests."

III. General Programs Undertaken in Cooperation with CI&E

Beginning in the spring of 1947, Government Section cooperated with Civil Information and Education in developing a number of special education programs relating to the Civil Code, the Code of Criminal Procedures, civil liberties, the relationships and functions of the executive, legislative and judicial branches of government, local government reforms, and political parties. In general the pattern for each of these programs was the same. Materials were prepared for use by the press and the publications, for presentation by means of radio, for the use of Japanese organizations and institutions, for use in schools, for the use of lectures, and for presentation by means of motion pictures, posters, slides, *kamishibai*, and exhibits.

These programs were planned and executed independently, but since each was so comprehensive and complex it is possible in this report only to cite representative examples of projects developed for each program.

1. Civil Codes[3]

In the case of the Civil Code, for example, a series of 34 radio programs were developed, illustrating basic provisions of the revised code and contrasting new provisions with the old. Particular emphasis was given to the equality of individuals under the law and to changes in the family law.

Following is a listing of the 34 broadcasts presented during the period from September 22, 1947 to December 29, 1947

Date	Time	Program	Contents of program	Type of presentation
Sept. 22. .	2000–2050	Farmers' Hour	Civil Code General Review	Chat by "Uncle Kobako"
Sept. 29 . .	2000–2050	Farmers' Hour	Civil Code General Review	Chat by "Uncle Kobako"
Sept 30 . .	1230–1300	Man on the Street	Civil Code General Review	Discussion
Oct. 2 . .	0715–0730	Radio Interviews	Effects of Marriage on Property (Art 762)	Dialogue, 15 min
Oct. 6	2000–2050	Farmers' Hour	Family Relations	Chat by "Uncle Kobako"
Oct. 10	0730–0745 (2d trans)	Today's Topics	Reasons for Divorce (Art. 770)	Talk, 15 min
Oct. 14	0615–0645	Morning Varieties	Minimum Ages for Marriage (Art. 731)	Dialogue, 10 min
Oct 15. . . .	1300-1400	Women's Hour (Feature for Happiness' Sake)	Effects of Marriage on Property (Art 762 and [illegible])	Questions and Answers
Oct. 20. . .	2000–2050	Farmers' Hour	Family Relations (Civil Code)	Chat by "Uncle Kobako"
Oct. 23. .	1930–2000	Man on the Street	Family Relations (Civil Code)	Discussion
Oct. 27. . . .	1300–1400	Women's Hour (For Happiness' Sake)	Minimum Ages for Marriage (Art 731)	Questions and Answers
Oct. 29. . . .	0715–0730	Radio Interviews	Procedures for [illegible] Divorce	Dialogue, 15 min
Oct. 31. . . .	0730-0745	Today's Topics	Inheritance Rights of Illegitimate (Art [illegible])	Talk, 15 min
Nov. 3. . . .	0715–2050	Farmers' Hour	The Code of [illegible]	Chat by [illegible]
Nov. 7. . . .	0715–0730	Radio Interviews	[illegible]	Dialogue, 15 min
Nov. 10. . . .	0615–0645	Morning Varieties	Inheritance Rights of Illegitimate (Art [illegible])	Dialogue, [illegible]
Nov. 12. . . .	1300–1400	Women's Hour (For Happiness' Sake)	[illegible]	Questions and Answers
Nov. 17. . . .	2000–2050	Farmers' Hour	[illegible]	Chat by [illegible]
Nov. 20. . . .	0615–0645	Morning Varieties	[illegible]	Dialogue, [illegible]
Nov. 21. . . .	[illegible]15–0730	Radio Interviews	Effects of [illegible]	Dialogue, [illegible]
Nov. 24. . . .	[illegible] (2d trans)	Today's Topics	[illegible]	Talk, [illegible]
Nov. 25	[illegible]	Women's Hour (For Happiness' Sake)	[illegible]	Questions and Answers
Nov. 27. . . .	[illegible]	Man on the Street	[illegible]	Discussion
Nov. 30. . . .	[illegible]	Today's Topics	[illegible]	Talk, [illegible]
Dec. 1.	[illegible]	Farmers' Hour	[illegible]	[illegible]
Dec. 3 . . .	[illegible]	Morning Varieties	[illegible]	Dialogue, [illegible]
Dec. [illegible]	[illegible]	Radio Interviews	[illegible]	Dialogue, [illegible]
Dec. 5	[illegible]	Man on the Street	[illegible]	Discussion
Dec. [illegible]	[illegible]	Radio Interviews	[illegible]	Dialogue, [illegible]

[illegible]

Date	Time	Program	Contents of program	Type of presentation
Dec. 15	2000–2050	Farmers' Hour	Inheritance and Civil Code Question Box	Chat by "Uncle Kokaku."
Dec. 19	1300–1400	Women's Hour (For Happiness' Sake)	Rights of Succession	Questions and Answers.
Dec. 23	1300–1400	Women's Hour (For Happiness' Sake)	Court of Domestic Relations	Questions and Answers.
Dec. 29	2000–2050	Farmers' Hour	Inheritance and the Civil Code Question Box	Chat by "Uncle Kokaku."

Individual freedom and the essential equality of sexes as provided in the Constitution was the keynote stressed in a new series of radio programs, initiated in April, designed to popularize the revised Civil Code. This series, entitled the "People's Radio School Hour," was scheduled to continue indefinitely.

Especially those broadcasts devoted to problems of domestic relations sought to enlighten the people concerning provisions governing family matters, including matrimonial relations and divorce, parental powers, guardianship, support, inheritance, etc. In each instance, the content matter of the programs was advisedly kept at a popular level with practical examples drawn from everyday life in order to appeal to the average listener. The programs, largely conducted on a question and answer basis, were made up for the most part of questions submitted by the listeners themselves.

For example, a number of broadcasts were devoted to typical cases of divorce. By means of "situations" culled from listeners' experiences, the speaker or interlocutor was enabled to explore the various circumstances under which the question of divorce arises, to explain the legal aspects and procedures involved in each case, and to elucidate objectively some of the chief problems concerning actual cases. For greater effectiveness and clarity, these "situations" were dramatized for the listeners' benefit as each problem was analyzed and pertinent questions answered.

Typical questions asked concerned the legal aspects of normal divorce cases, problems nevertheless relatively novel for the average Japanese: problems concerning support, property sharing, and inheritance, the status of children of divorced parents, and other pertinent questions of social responsibility.

Questions of this sort were fruitful since they provided an opportunity of describing and thus educating the people regarding the functions as well as the jurisdiction of the Domestic Relations Court, an innovation in social relationships among the average Japanese. Since women are keenly aware of the social implications of divorce, several of their questions sought enlightenment regarding the place of a divorcee in modern society.

Following are brief excerpts from a typical program:

"FIRST WOMAN:

"My lot has been a hard one! We women have always been at a disadvantage in comparison with our males, and we have never had any recourse to justice in problems of this sort.

"My husband was physically weak and sickly when I married him. Nevertheless I loved him dearly. I worked hard for his sake and to support our family. Single-handed I took care of our shop. The shop thrived and expanded to what it is today. But for some time, my husband has led a prodigal life. He has had several love affairs and has stayed away from our home. I have put up with all this in the hope that my husband would see the error of his ways and would return home.

"But now I have learned that he is thinking of investing our money to open a shop for one of his lady friends. The money is to come from the savings from our shop, for which I have slaved for years. When I confronted him with this fact and told him that I wished to separate from him, he merely replied: 'You can go away, if you wish, but be careful that you do not take with you more than you brought here with you when you married me.' What recourse do I have against such treatment?

"INTERLOCUTOR:

"In a case of this sort, can a divorced woman claim a share in the property?

"LEGAL EXPERT:

"To be sure, she has legal grounds for such a claim.

"In thi[illegible] both the husband and wife worked together [illegible] ate their mu[illegible] operty. The husband [illegible] creased hi[illegible] wealth through the a[illegible] Theref[illegible] f divorce, the

wife can legally make claim to a share of the property held in common

"In the past, the wife was compelled to go away penniless At present, however, the wife can advance her claim under Article 768 of the revised Code of Civil Procedure, which states that when a divorce occurs through mutual consent, one party can demand an accounting of the common property and claim a share of it

[illegible] has the wife any legal means of pressing her claim?

"LEGAL EXPERT:

"Such matters involving property are difficult to solve loosely by mutual agreement A problem of this sort may be referred to the Domestic Relations Court for settlement.

"INTERLOCUTOR·

'How will the Domestic Relations Court settle such a problem?

[illegible]

the wife has contributed to her husband's wealth and to what degree she may lay just claim and benefits from

[illegible]

"INTERLOCUTOR

"Let us hear the facts in this case.

"THIRD WOMAN

"We have been married three years My husband

[illegible]

you and has asked me to intervene to settle the matter.

'THIRD WOMAN

"This man who called on me brought with him a petition for divorce, fully drawn up and signed by my husband

"I was shocked I wanted to see my husband But the man declared that my husband refused to see me He induced me to sign the divorce petition against my will, urging me that by so doing I would be helping my husband Recently, however, I discovered that this was all a plot on the part of the relatives to induce my husband to give me up and return to his native village And unknowingly I was framed into giving my husband a divorce

'What shall I do?"

INTERLOCUTOR

In this case, can t the divorce be annulled?"

"LEGAL EXPERT

"Yes, it can If a wife or husband was tricked or threatened by outsiders, the divorce can be annulled In cases of collusion or intimidation the injured party has recourse to the law by filing a petition of annulment with

[illegible] cautious to examine their situation under all phases before instituting a petition for divorce

The program goes on, and other phases of divorce cases are taken up

Cases of mental and physical incompatibility, as well as cases of cruelty and cases involving children were discussed, in each instance the listeners were instructed as to the legal jurisdiction involved and the proper method of instituting legal proceedings. The announcer concluded each program by soliciting the listening audience to send in questions concerning their problems to be answered on subsequent programs

2. Code of Criminal Procedures[4]

Since the Revised Code of Criminal Procedures represented a complete break with traditional police and judicial procedures, an intensive effort was made to inform the people concerning fundamental revisions. The press, radio and other media were employed to [illegible] essential information. One of the special projects developed was a series of 20 [illegible] ically illustrating principal points of the re-

[4]Appendix H 42, Code of Criminal Procedure, July 5, 1948

Date	Time	Program	Contents of program	Type of presentation
Dec. 15	2000–2050	Farmers' Hour	Inheritance and Civil Code Question Box	Chat by "Uncle Kokaku."
Dec. 19	1300–1400	Women's Hour (For Happiness' Sake)	Rights of Succession	Questions and Answers.
Dec. 23	1300–1400	Women's Hour (For Happiness' Sake)	Court of Domestic Relations	Questions and Answers.
Dec. 29	2000–2050	Farmers' Hour	Inheritance and the Civil Code Question Box	Chat by "Uncle Kokaku."

Individual freedom and the essential equality of sexes as provided in the Constitution was the keynote stressed in a new series of radio programs, initiated in April, designed to popularize the revised Civil Code. This series, entitled the "People's Radio School Hour," was scheduled to continue indefinitely.

Especially those broadcasts devoted to problems of domestic relations sought to enlighten the people concerning provisions governing family matters, including matrimonial relations and divorce, parental powers, guardianship, support, inheritance, etc. In each instance, the content matter of the programs was advisedly kept at a popular level with practical examples drawn from everyday life in order to appeal to the average listener. The programs, largely conducted on a question and answer basis, were made up for the most part of questions submitted by the listeners themselves.

For example, a number of broadcasts were devoted to typical cases of divorce. By means of "situations" culled from listeners' experiences, the speaker or interlocutor was enabled to explore the various circumstances under which the question of divorce arises, to explain the legal aspects and procedures involved in each case, and to elucidate objectively some of the chief problems concerning actual cases. For greater effectiveness and clarity, these "situations" were dramatized for the listeners' benefit as each problem was analyzed and pertinent questions answered.

Typical questions asked concerned the legal aspects of normal divorce cases, problems nevertheless relatively novel for the average Japanese: problems concerning support, property sharing, and inheritance, the status of children of divorced parents, and other pertinent questions of social responsibility.

Questions of this sort were fruitful since they provided an opportunity of describing and thus educating the people regarding the functions as well as the jurisdiction of the Domestic Relations Court, an innovation in social relationships among the average Japanese. Since women are keenly aware of the social implications of divorce, several of their questions sought enlightenment regarding the place of a divorcee in modern society.

Following are brief excerpts from a typical program:

"FIRST WOMAN:

"My lot has been a hard one! We women have always been at a disadvantage in comparison with our males, and we have never had any recourse to justice in problems of this sort.

"My husband was physically weak and sickly when I married him. Nevertheless I loved him dearly. I worked hard for his sake and to support our family. Single-handed I took care of our shop. The shop thrived and expanded to what it is today. But for some time, my husband has led a prodigal life. He has had several love affairs and has stayed away from our home. I have put up with all this in the hope that my husband would see the error of his ways and would return home.

"But now I have learned that he is thinking of investing our money to open a shop for one of his lady friends. The money is to come from the savings from our shop, for which I have slaved for years. When I confronted him with this fact and told him that I wished to separate from him, he merely replied: 'You can go away, if you wish, but be careful that you do not take with you more than you brought here with you when you married me.' What recourse do I have against such treatment?

"INTERLOCUTOR:

"In a case of this sort, can a divorced woman claim a share in the property?

"LEGAL EXPERT:

"To be sure, she has legal grounds for such a claim.

"In this case, both the husband and wife worked together to accumulate their mutual property. The husband, however, increased his personal wealth through the aid of his wife. Therefore, in case of divorce, the

wife can legally make claim to a share of the property held in common.

"In the past, the wife was compelled to go away penniless. At present, however, the wife can advance her claim under Article 768 of the revised Code of Civil Procedure, which states that when a divorce occurs through mutual consent, one party can demand an accounting of the common property and claim a share of it.

"INTERLOCUTOR:

"But, as we have heard in this case, the wife discussed the matter with her husband and he decided that she should have no part of his property. Has the wife any legal means of pressing her claim?

"LEGAL EXPERT.

"Such matters involving property are difficult to solve loosely by mutual agreement. A problem of this sort may be referred to the Domestic Relations Court for settlement.

"INTERLOCUTOR

"How will the Domestic Relations Court settle such a problem?

"LEGAL EXPERT

"The Court will endeavor to arrive at an equitable settlement through an objective evaluation and accounting of the property in question. It will take into consideration the length of the marriage of the couple and all other circumstances surrounding the case. The Court will strive to reach a decision as to what extent the wife has contributed to her husband's wealth and to [illegible]

"INTERLOCUTOR

"Let us hear the facts in this case

"THIRD WOMAN

"We have been married three years. My husband [illegible]

on me. He informed me that my husband had divorced me, and he told me the circumstances.

ELDERLY MAN

"Ryuji came up to Tokyo, fell in love with you, and married you. In truth, he was already engaged to marry a girl in the village. There was a baby born to them. They were not married, and so no great fuss was raised when he married you.

"But recently the girl's brother was repatriated. He was incensed when he learned that Ryuji was married to you. His anger created such a sensation in our village that we decided to recall Ryuji and talk the matter over. The outcome was that Ryuji has consented to divorce you and has asked me to intervene to settle the matter.

THIRD WOMAN

"This man who called on me brought with him a petition for divorce, fully drawn up and signed by my husband.

"I was shocked. I wanted to see my husband. But [illegible]

And unknowingly I was tricked into giving my husband a divorce.

"What shall I do?"

"INTERLOCUTOR

"In this case, can't the divorce be annulled?"

"LEGAL EXPERT

[illegible] discovery of the event. If the court rules in favor of [illegible]

The program goes on, and other phases of divorce cases are taken up.

Cases of mental and physical incompatibility, as well as cases of cruelty and cases involving children were discussed. In each instance the listeners were instructed as to the legal jurisdiction involved and the proper method of instituting legal procedures. The [illegible] concluded each program by [illegible] listening audience to send in questions [illegible] their problems to be answered [illegible] programs.

2. Code of Criminal Pro[illegible]

Since the Revised [illegible] dures represented [illegible] tional police and [illegible] sive effort was made [illegible] cerning fundamental [illegible] and other [illegible] essential [illegible] [illegible]

---

*Appendix H [illegible] Code of Criminal Procedure, July 5, 1948.

vised procedural code. Ten thousand sets of this poster series were printed and put on display throughout the nation—in schools, community halls, post offices, government buildings, railroad stations, and in many other places where large numbers of people gather. In addition, film strips of the series were made and were distributed to schools.

3. Local Government Reform[5]

Extensive use was made of all communications media in transmitting information concerning local government reforms: elimination of the Tonari Gumi system, the introduction and development of local autonomy, the operation of such instrumentalities of local government as prefectural assemblies and the police, the election of city, town and village officials, etc. In addition to the press and radio, and the introduction of special materials in social study courses in the schools, several films relating to local government were widely distributed throughout Japan. One relating to local government in Pennsylvania was adapted by substituting a Japanese sound track. A commercial feature film, "The Farmer's Daughter," was widely advertised as an excellent illustration of democratic procedures in local government. This film was also frequently used as part of specific education programs.

The series of press conferences relating to the functions of political parties in a free society was accorded large space in Japanese newspapers. So great was public interest in these discussions of legitimate political party operation that several political education organizations in Japan adapted the material for special use. A labor union group distributed the text of the statements to union members. Another organization published the material as a political education pamphlet for dissemination to political party leaders, public officials, high school and university teachers, etc. Still another expanded the statements into a complete 4-month study course.

[5]Appendix H: 14, Local Autonomy Law; Law No. 67, April 17, 1947.

Radio was widely used to present party opinions and argument concerning current political issues.

Political education programs also related to the three branches of government: executive, legislative and judicial.

4. The Executive Authority

Radio, press, motion pictures and other media were utilized in an effort to describe the powers of the executive under Japan's new Constitution. The method of electing the Prime Minister, the appointment of Cabinet ministers and their responsibility to the people was discussed and explained. A particular effort was made to indicate the Prime Minister's changed relationship to the Emperor, his new relationship to the Diet and to prefectural and local governments. The status of the executive under the new Constitution was pointed up and illustrated by widespread dissemination of information concerning Cabinet orders, their limitations and purpose. In all information concerning the Diet emphasis was given to the fact that it is the highest law-making body in the land, now no longer dependent upon or subordinate to the executive, subject only to the will of the people. An effort was made to enhance prestige of its members so that they might better function as independent representatives of the people. Materials concerning the House of Representatives have concerned such specific matters as its authority and functions, the use of standing committees, public hearings, etc. Presentations concerning the House of Councillors have emphasized its democratic character in contrast to the old House of Peers.

a. *The Diet.* The work of the Diet has been made widely known to the people of Japan by means of a continuing series of Sunday evening broadcasts during which the work of the Diet is reported to the nation. In arranging these programs every effort is made to permit a fair and representative hearing for all political

groups. British and American films which illustrate the operation of the legislative organs in a democratic state have been widely disseminated. Motion pictures are also being made to inform the people concerning the duties and responsibilities of the Diet.

The League of Political Education for Democracy in April initiated preparation of a film explaining in simple and specific terms how a bill is enacted into law by the elected representatives of the people, with special emphasis given to the manner in which the will of the people is expressed.

b. *The Judiciary.* All steps in the complete reorganization of the Japanese judicial system were reported to the people of Japan by means of radio, press, pamphlets, motion pictures, posters, etc. Particular efforts were made to explain the significance of the reorganization, the new democratic method of appointing judges, the people's power of referendum, the greatly expanded power of the Supreme Court, which is primarily responsible for ensuring the establishment of government by law, and the importance of the Supreme Court's power to review the constitutionality of all laws, regulations or official acts. Especially effective were motion pictures which fully described the operation of a democratic court system and the manner in which courts operate to safeguard the people's rights

c. *Special Political Education Projects.* In addition to all the generalized programs which have been described, a great number of special political education projects were developed, ranging from general advice concerning materials contained in a basic volume on the Constitution for use in the nation's schools to assistance in getting widespread publicity for reports of Diet committees.

"The Story of the New Constitution," simply and concretely written in a manner understandable to young children, was distributed in the millions of copies to the nation's schools, which are using the book as the text for an intensive course of study. The volume explains provisions of the new Constitution and discusses their meaning to the average citizen of Japan

Assistance was given the Hoarded Goods Committee of the first National Diet in planning news coverage for the Committee's report. The press conference, during which the report was made public, was extensively reported by all newspapers and magazines. Proceedings of the press conference were transcribed for radio and recorded by the newsreel companies for distribution to all theaters of the nation.

The following listing of radio programs during the month of April illustrates one phase of the overall program concerning general political education:

Date	*Time*	*Program*	*Contents of program*	*Type of presentation*
Apr. 1, 1948	1300–1400	Women's Hour	Political Education of Women	Roundtable (30).
Apr. 5, 1948	2000–2030	Farm Hour	Political Information and Education	Q. and A.
Apr 8, 1948	1300–1400	Women's Hour	Democratization of Women (Women's [illegible]	[illegible]
Apr. 11, 1948	2030-2100	Report to the *Nation*	[illegible]	[illegible]
Apr. 12, 1948	1300–1400	Women's Hour	[illegible]	[illegible]
Apr 13, 1948	1300-1400	Women's Hour	New Wage System for Women	Talk (10).
Apr. 14, 1948	2000–2030	March of Time	The New Police	Documentary (30)
Apr. 17, 1948	2000–2030	Family Hour.	Criminal Code	Talk (10).
Apr. 17, 1948	2000–2030	Family Hour.	Social Security in the Home	Talk (20).
Apr. 19, 1948	1300–1400	Women's Hour	Current Political Picture	Talk (12).
Apr. 19, 1948	2000-2030	Farm Hour	"Be a Participant and not a Spectator in Politics"	(Uncle Kokichi).
Apr. 20, 1948	1300–1400	Women's Hour	Women Leaders in the World	Undecided (12).
Apr. 22, 1948	1300–1400	Women's Hour	Organization of Housewives	Talk (10).

Date	Time	Program	Contents of program	Type of presentation
Apr. 24, 1948	2000–2030	Family Hour	Civil Code—The Eldest Son	Talk (10).
Apr. 25, 1948	2030–2100	Report to the Nation	Political Review	Documentary.
Apr. 26, 1948	1300–1400	Women's Hour	Current Topics	Talk (10).
Apr. 27, 1948	1300–1400	Women's Hour	Political Information and Education	Undecided (15).
Apr. 29, 1948	1300–1400	Women's Hour	The Working Woman	Talk (10).
Undecided (several dates).	2145–2200	Commentary	Political Information and Education	Talk (10).
Several Dates	1815–1830 (2d trans.)	Editorials	Current Social Problems	Talk (15).

In an effort to increase the effectiveness of motion pictures as an information dissemination media, CI&E procured 2,000 16-millimeter movie projectors and a large number of slide projectors which were strategically dispersed throughout Japan. Utilization of this equipment has made it possible to show education movies and film strips in all communities in Japan. Reports from Military Government units in the field indicate that these films have occasioned tremendous interest.

IV. League of Political Education

The Headquarters cooperated with Diet members in establishing the League of Political Education for Democracy, which was formally organized during Diet ceremonies in August 1947. One hundred and twenty directors were appointed, 90 of them Diet members representing all parties, 30 representatives of film, theatrical, and publishing companies.

It was not until December, however, that the Diet appropriated funds to the League. In the interim a general plan of operation was formulated and committees were organized to develop various phases of the League's program.

The Diet appropriated ¥26,000,000 for six months' operation by the League, but part of this was to be used to wind up affairs of the Constitution Popularization Society, scheduled for dissolution on December 31, 1947.

Dissolution of the Society was recommended by Komakichi Matsuoka, Speaker of the House of Representatives and president of both the Society and the League, when it became apparent that the functions of the two organizations were in some degree duplicative. To improve efficiency the Society agreed in November to assign its functions to the League and to disband.

From the beginning the League was faced with many difficulties which interfered with the launching of a constructive program, among them:

1. The large number of directors proved too unwieldy for efficiency operation.
2. Non-Diet members felt too outnumbered to take an active interest.
3. Diet members tended to appoint as members of the working staff politically friendly individuals with little regard for their qualifications.
4. Political considerations received too much consideration in program planning.
5. A great deal of time was devoted to terminating affairs of the Society and in arranging for continuance of certain of its projects.
6. Differences of opinion existed concerning the character of the program to be undertaken.

Despite these difficulties, the working staff of the League made a serious attempt to pro-

duce ideas and to initiate programs proposed by the various standing committees—on press and publications, motion pictures, theatricals, *kamishibai*, radio research, and public meetings However, the staff's administrative inexperience and lack of familiarity with the materials and with public relations techniques caused delays Because of this general uncertainty the League tended to wait for various groups to request specific projects with the result that many of its activities were unintegrated, "one-shot" affairs

Although the League was organized to undertake a national *mass* education program, differences of opinion existed concerning the manner in which such a program should be developed. Some thought it would be best to train or indoctrinate an "elite"—teachers, professors, government and political leaders, intellectuals, who eventually would instruct the people of the nation Others considered it necessary more literally to interpret the League's statement of purpose—and to devote its facilities to mass education projects

From month to month, however, the scope of the League's program was expanded · lecture meetings, in which prominent educators, scholars, political and government leaders participated, were held in major cities, some excellent *kamishibai* were prepared for dissemination through community halls and schools, a series of books describing and commenting on important legislation enacted during the first national Diet session was published and distributed to schools, libraries, editors, legislators, national and local government officials, judges, procurators, etc.; arrangements were made with movie producers to incorporate in documentary films and newsreels materials of importance to the achievement of democratic objectives in Japan.

Nevertheless, some confusion concerning program objectives continued to exist. As a consequence, Government Section and Civil Information and Education Section accepted the League's invitation to participate more actively in the operation of the League, thereby modifying the practice of serving merely as general advisors It was made clear, however, that the Headquarters would gradually withdraw its participation as the League's program developed and became fully operative. Accordingly, a long series of conferences with League officers and staff members was initiated. As a result, organization of the League was revised to permit more efficient operation and to insure integration of the various components of the organization's program The basic program was also revised to broaden its appeal and more effectively to utilize modern public relations techniques

Directors of the renovated League formulated a long-range program providing for comprehensive presentation of basic political education materials by means of press and publications, radio, movies, theatricals, posters, exhibits, *kamishibai*, a national series of lecture meetings, etc Various phases of the program were developed by individual divisions of the League, but individual components were integrated into a comprehensive program designed to reach the "grass roots" of the nation.

The League's program is too comprehensive to permit detailed description in this history. Suffice to report that all the techniques noted in the preceding paragraph are being utilized to develop individual, but integrated and related, programs, concerning all aspects of the new constitution and the revolutionized governmental, economic, and social structure necessitated by its full implementation. These programs concern the assignment of sovereignty to the people, and the resulting need for government decentralization, local government autonomy, reform of the police system, elimination and destruction of feudal or ultranationalistic influences, reform of the family system, and all important aspects of the Civil, Criminal, and procedural codes.

And these programs are being developed in such a manner as to reach all the people of Japan—by national radio programs, nationally

distributed movies, exhibits, *kamishibai*, theatrical productions, the publication and mass distribution of books, pamphlets and newspapers, and nationally scheduled lecturers. The League is also making political education materials available to schools and has initiated a series of adult education courses, which are being presented through more than 2,000 community centers throughout the country.

Headquarters participation in the League's work is being withdrawn as its program develops. Within the near future assistance will be limited to specific technical advice requested by the League.

V. Information Agencies Established in Government Offices

The completely autocratic character of the Japanese state in the period prior to the surrender and the virtual nonexistence of a public relations or advertising industry rendered difficult the task of informing the people, by indigenous means, of the tremendous social, political, and economic reforms of the Occupation.

Convinced that preservation of these reforms depends in large measure on the people's knowledge and understanding of them, Civil Information and Education Section, with some assistance from Government Section, encouraged the establishment of information agencies in the national government ministries. Provision was also made for the creation of information agencies to serve prefectural governments.

The activities of these information offices, specifically defined in regulations governing their operation, are limited to the performance of duties assigned by the ministries or local governments served. Political activity or partisanship is specifically forbidden as is any attempt to "sell" a program of the government. In the case of the information office in the Attorney General's Office, for example, functions are strictly limited to the transmittal—by means of all media—of information concerning the activities of procurators, measures taken to safeguard civil liberties, provisions of Civil, Criminal, and procedural codes.

Experienced and trained public relations personnel to staff these offices were unavailable and so the Headquarters undertook the task of helping to train personnel. Operation of these agencies is being observed over an extended period in order to suggest techniques and procedures, and the effective utilization of media.

VI. Liaison with Military Government

In order to give Military Government teams first-hand information concerning the many changes and reforms in the functioning and activity of the Japanese government, Government Section sponsored two series of regional conferences and published a weekly publication *Government News*.

During August 1947 two teams of Government Section representatives visited the Tokyo-Kanagawa, Kanto, Kinki, Tokai-Hokuriku, Hokkaido, Tohoku, Kyushu, Chugoku and Shikoku Military Government Regional Headquarters to confer with the legal and government officers of all prefectures. Subjects discussed included "National Government," "The Relationship of National and Local Governments," "Local Government," "Reform of the Judicial and Legal System," and "The

Purge." Government Section personnel answered general questions relating to each of these subjects, as well as questions relating to specific local problems.

The conferences proved so useful that they were repeated during October 1947. Government Section's heavy work schedule made it impossible to send personnel into the field to participate in projected subsequent conferences

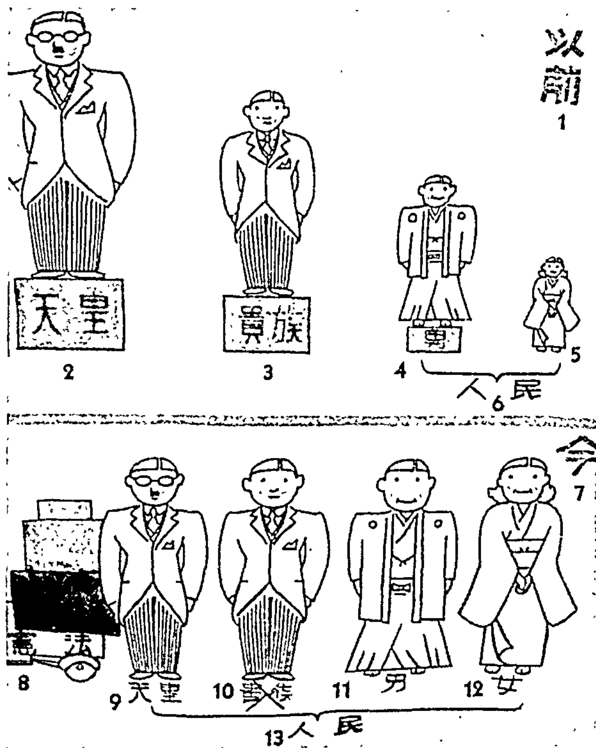
The first issue of *Government News* was published on September 17, 1947 and was distributed weekly thereafter to Military Government teams. Its purpose was to supply timely information on (1) changes in procedures in national and local governments; (2) objectives and implementation of the purge program; (3) court and legal reforms; (4) revisions of the Civil Code, the Criminal Code and the procedural codes, including specific illustrations of changed procedures; and (5) pending and enacted legislation The periodical also included news reports illustrating development of the democratic process in Japan

Educational Posters

The illustrations on the following pages are reproductions of posters used by various Japanese organizations to acquaint the people with basic democratic reforms.

Figures I to XIII inclusive represent a series of posters issued by the Constitution Popularization Society and widely displayed beginning soon after the new Constitution was promulgated on November 3, 1946. These posters were also reproduced on film strips and used in theaters, schools and public halls throughout Japan.

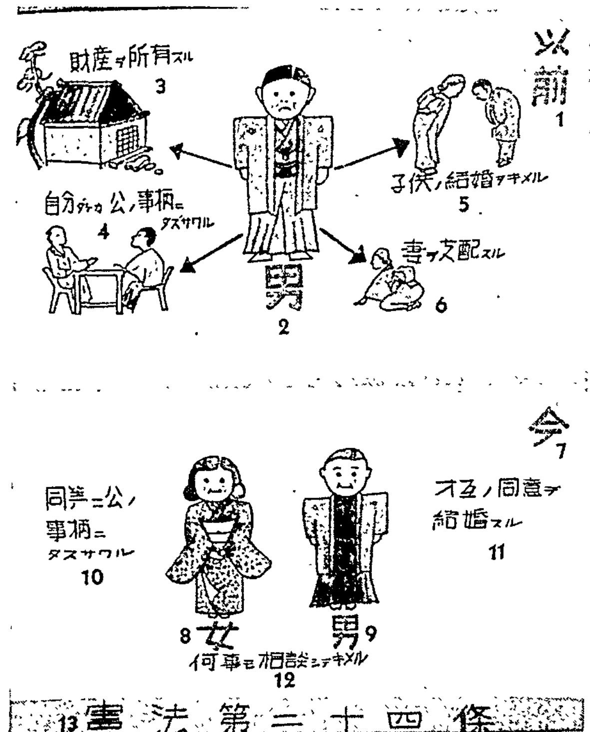
Figures XIV to XXVIII inclusive were designed to acquaint the people with the safeguards afforded them by the revised Code of Criminal Procedure under the new Constitution.



Upper half: 1, Before; 2, Emperor; 3, Nobleman; 4, Man; 5, Woman; 6, People;

Lower half: 7, NOW; 8, Constitution; 9, Emperor; 10, Nobleman; 11, Man; 12, Woman; 13, People.

Figure I. Legal and Social Equality.



Upper half: 1, Before; 2, the Man; 3, Owned the property; 4, Attended to official matters; 5, Decided on the children's marriage; 6, ruled over the wife.

Lower half: 7, NOW; 8, Woman; 9, Man; 10, Equally attend to official matters; 11, Marriage is based on mutual consent of both sexes; 12, Everything is decided after consultation; 13, Constitution, Article 24.

Figure II. Equality of the Sexes.

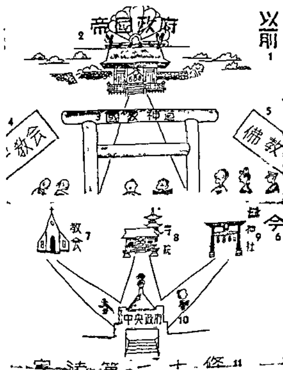
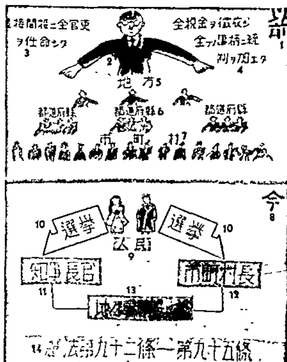


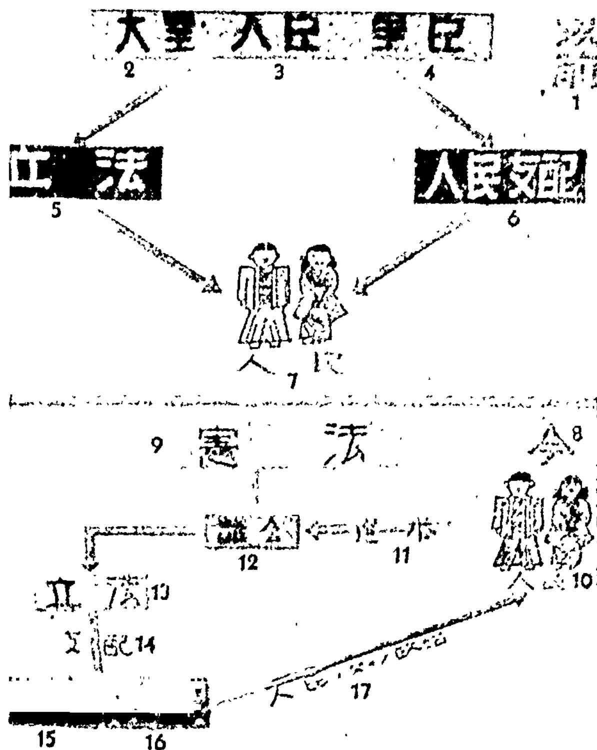
Figure III Freedom of Religion



Upper half 1, Before, 2, The Central Government, 3, Appointed all officials directly or indirectly, 4, Collected the taxes, controlled everything, 5, Local Districts, 6, Prefectures, 7, Cities, towns and villages

Lower half 8, NOW, 9, The People, 10, Elections, 11, Governors, 12, Headmen of cities, towns and villages, 13, Handle local affairs, 14, Constitution, Articles 92-95

Figure IV Popular Election of Local Officials



Upper half: 1, Before; 2, Emperor; 3, Ministers; 4, Elder Statesmen; 5, Legislation; 6, Ruled the People; 7, People.

Lower half: 8, NOW; 9, Constitution; 10, People; 11, Election; 12, Diet; 13, Legislation; 14, Control; 15, Emperor; 16, Ministers; 17, Government for the people.

Figure V. Popular Government.



Upper half: 1, Before; 2, The Executive; 3, The Diet.

Lower half: 4, NOW; 5, The Executive; 6, The Diet; 7, Constitution, Article 41.

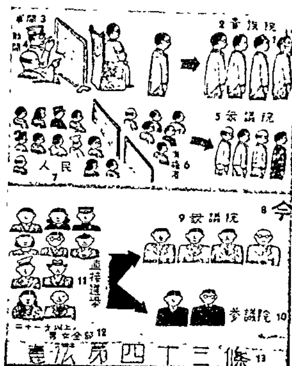
Figure VI. The Diet.





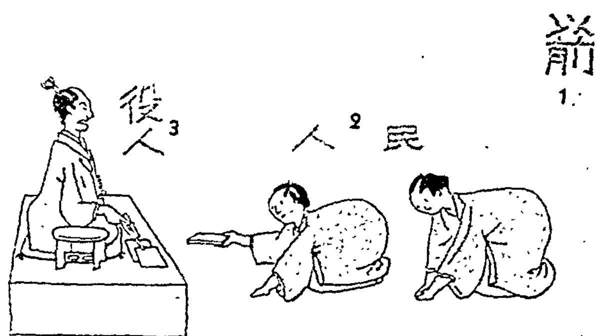
Upper half 1, Before, 2, War and Navy Ministers, 3, Cabinet
Lower half 4, NOW, 5, Cabinet, 6, Constitution, Article 66

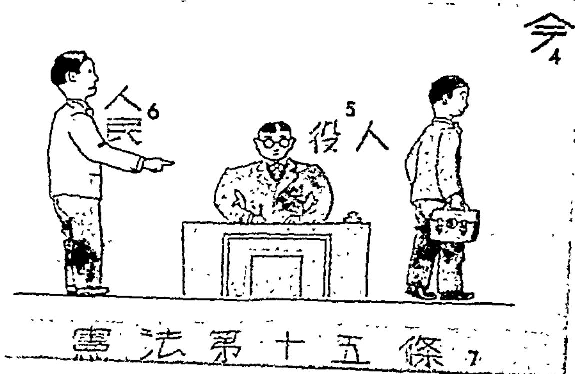
Figure VII No Military



Upper half 1, Before, 2, House of Peers, 3, Military Clique, 4, Financial Clique, 5, House of Representatives, 6, Voters, 7, People
Lower half 8, NOW, 9, House of Representatives, 10, House of Councillors, 11, Direct Election, 12, By all male and female voters 21 years old and over, 13, Constitution, Article 43

Figure VIII The Two Houses

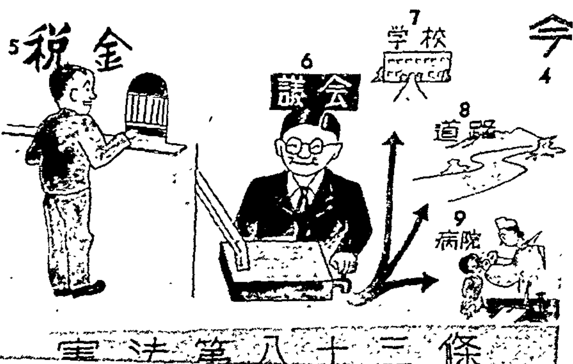




Upper half: 1, Before; 2, People; 3, Officials.
Lower half: 4, NOW; 5, Officials; 6, People; 7, Constitution, Article 15.

Figure IX. Government Officials.

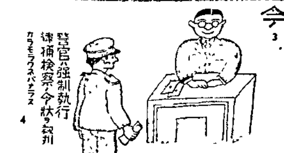




Upper half: 1, Before; 2, Taxes; 3, Executive.
Lower half: 4, NOW; 5, Taxes; 6, Diet; 7, Schools; 8, Roads; 9, Hospitals.

Figure X. Public Finance.

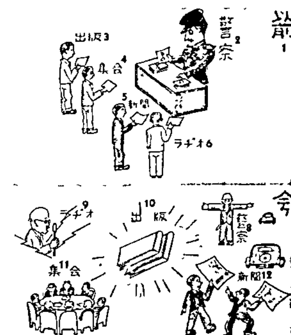




Upper half 1, Before, 2, Police were able to make arrests and search homes freely.

Lower half 3, NOW, 4, Police officials must obtain warrant of arrest or of search and seizure before making either, 5, Constitution, Articles 31-35

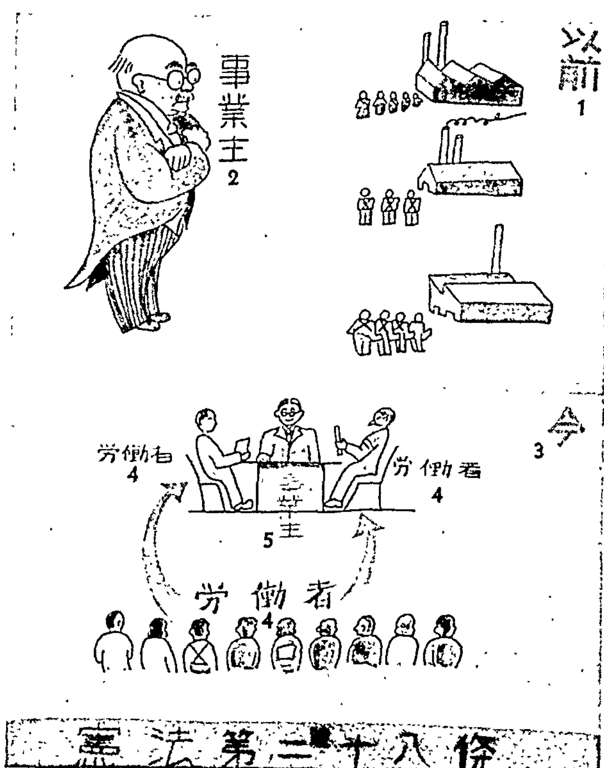
Figure XI Search and Seizure



Upper half 1, Before, 2, Police, 3, Publications, 4, Assembly, 5, Newspapers, 6, Radio

Lower half 7, NOW, 8, Police, 9, Radio, 10, Publications, 11, Assembly, 12, Newspapers, 13, Constitution, Article 21

Figure XII Freedom of Speech, Press and Assembly



Upper half: 1, Before; 2, Enterpriser.
Lower half: 3, NOW; 4, Workers; 5, Enterpriser; 6, Constitution, Article 28.

Figure XIII. Workers' Rights.



Figure XV. No person may be apprehended without a warrant issued by a judge; in the past the public procurator was able to issue warrants of arrest and detention in cases.

刑事手続ノ改正

刑事訴訟法ノ目的ハ警官検察官司法官ガ人民ニ対シテ勝手ナ行爲ヤ不法ナ取扱ヒヲシナイデ人民ヲ保護シ同時ニ犯罪人ノ捜査ト迅速ナ裁判ニヨッテ國民ノ利益ヲ図ルモノデス。

ケレドモコノ事ハミンナガ好キ勝手ナコトヲシテモヨイトイウ事デモナク、マシテ罪ヲ犯スコトハ自由ナンダト解釈サレテハナラナイ。

コノ写真ニ出テ来ル人々ハ司法省ノ係ノ人達デ全國ノ人々ノ為ニ日夜献身サレテ居ル人々デス

Figure XIV. Revision of the Code of Criminal Procedure. The object of the Code of Criminal Procedure is to protect the people from arbitrary acts and unlawful treatment by police officials, public procurators, and judicial officials, and to serve the interests of the people by prompt investigation of crime and speedy trial. But this by no means implies that everybody is free to do what he likes, nor does it mean that anyone is free to commit a crime.



Figure XVI. The following exceptions are made:

1. When there are sufficient grounds to suspect that a serious crime (punishable by death, penal servitude or imprisonment for life, or a period of three years or more) has been committed and when an urgent situation requires immediate issuance of a warrant.
2. When a criminal is caught while actually committing a crime.

In the above cases requests for the warrant of arrest should be made to the judge immediately following apprehension.



Figure XVII. The maximum length of time that a person can be held *by the police is 48 hours from the time of his physical apprehension*



Figure XIX Public proceedings (indictment) must be brought *against a suspect within 10 days from the time a warrant of detention is* requested In other words, a suspect must be formally charged with the crime, and public action must be brought against him within 13 days *at the most from the time of his physical apprehension*



Figure XVIII After the time limit expires, he must be turned over to the *public procurator, and a decision whether to request* a warrant of detention must be made The public procurator must reach a decision within 24 hours Both the policeman and the public procurator are required to act promptly This is the maximum time limit The indictment procedure has to be completed within this period, or the suspect must be released.



Figure XX. The time limit concerning warrants of arrest, of detention, and indictment is calculated from the time of physical apprehension In the past the time limit was calculated from the time of technical arrest, *that is, from the time the suspect* was brought to the police station Therefore, in the past there were cases when the suspect was not brought to the police station until a confession had been obtained *Now, however,* the time limit has no connection with the technical arrest It is calculated from the time of the physical apprehension



Figure XXI. Today, the people are protected from unlawful seizure and search in their own homes. If a seizure or search is to be conducted, a warrant issued by a judge is necessary.

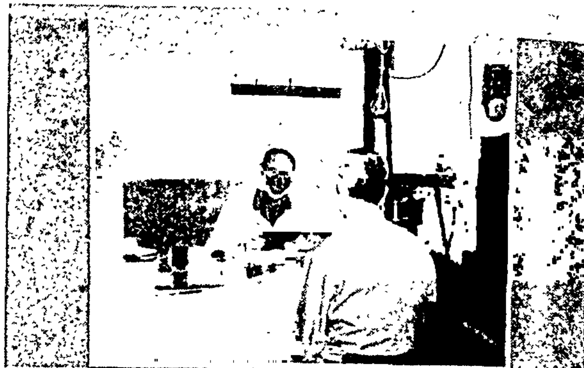


Figure XXIII. When seized, the suspect apprehended must be told the essential facts of the crime for which he is apprehended. He must have a defense counsel. If requested by the suspect, the reason for his detention must be stated at once in an open court in his presence and the presence of his defense counsel.



Figure XXII. Exceptions, however, are made (1) when making the seizure, the search, or the inspection while executing the warrant of arrest and detention, and (2) when arresting the criminal in the act of committing the crime.



Figure XXIV. If the accused is too poor to hire a defense counsel, the State must provide a defense counsel for him. In the past, a defendant could not ask for a defense counsel until the indictment proceedings against him began. Now, he can have a defense counsel immediately.



Figure XXV. The accused furthermore has the following protections:
a. He may not be compelled to testify against himself.
b. No person may be convicted when the only proof against him is his own confession. In other words, he may not be convicted on his own confession.



Figure XXVII. [illegible]



Figure XXVI. Confession made under compulsion, torture, threat or after prolonged detention or confinement will not be accepted in court.



Figure XXVIII. Documents containing testimony of witnesses whom the accused has not had the opportunity to interrogate are not accepted in court as evidence. However, an exception may be made in cases when it is impossible to give the accused the opportunity to interrogate witnesses, or when it is extremely difficult to give opportunity to interrogate them, for instance, when the testimony is made by a witness living in China or some distant place in Asia.

U S GOVERNMENT PRINTING OFFICE [illegible]